Supreme Court, U.S.
FILED
DEC 16 1997

No. 97-372

In the Supreme Court of the United States

OCTOBER TERM, 1997

UNITED STATES OF AMERICA, PETITIONER

v.

UNITED STATES SHOE CORPORATION

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED
AUGUST 29, 1997
CERTIORARI GRANTED OCTOBER 31, 1997

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UNITED STATES COURT OF
INTERNATIONAL TRADE

Docket No. 94-11-00668

UNITED STATES SHOE CORPORATION, PLAINTIFF

v.

UNITED STATES

DOCKET ENTRIES

1994			
Nov.	3	(1)	Summons filed.
	3	(2)	Complaint filed.
	10	(3)	ASSIGNED TO 3 JUDGE PANEL Chief Judge DiCarlo, Judge Restani, Judge Musrave
1995			
Jan.	4	(4)	Deft filed consent motion for EOT until 2-2-95 to respond to pltf's complaint.
	5	(5)	Deft's motion for EOT until Feb 2/95 GRANTED.

Feb. 13 (6) Deft filed motion for EOT out of time until Mar 4/95 to respond to Pltf's Complaint.

15 (7) As per Slip op. 95-23 of 2-15-95 pltf and deft shall file concurrent cross-motions for summary judgment addressing issues set forth in order. Cross motions and supporting briefs shall be filed by 4-14-95. Pltf's whose actions are listed on attached schedules shall be allowed to file Amicus Curiae brief provided they file notice to that effect within 30 days of instant order. Parties shall notify court within 30 days of instant order if there are any other factual issues other than those described in paragraph 2 of instant order. Deft may file responsive brief within 60 days after Amicus Curiae briefs are filed.

15 As per Slip Op 95-23 of 2-15-95 all action is stayed in this action until further direction of the court. W/94-11-00668

27 (8) JEFFREY H. PFEFFER, ESQ., STEVEN R. SOSNOV, ESQ and THOMAS J. KOVARICIK, ESQ, of IRVING A. MANDEL filed notice to participate as amicus curiae and oral argument as well.

23 (9) STEVEN P. FLORSHEIM and ERIK D. SMITHWEISS of GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN, filed notice to participate as amicus curiae through the filing of a single brief and participation in oral argument.

28 (10) PATRICK D. GILL of RODE & QUALEY filed notice that he will participate as amicus curiae, through the filing of a single brief and participation in oral argument.

Mar. 3 (11) STEVEN H. BECKER of COUDERT BROTHERS filed notice to participate as amicus curiae, through the filing of a single brief and participation in oral argument.

Feb. 24 (12) PETER J. ALLEN of NEVILLE, PETERSON & WILLIAMS filed notice to appear as amicus curiae by the filing of briefs and participation in oral argument.

Mar. 6 (13) Plaintiff United States Shoe Corporation and related case plaintiffs filed motion to modify the 2-15-95 scheduling order (Slip. Op. 95-23) to provide 60 days within which to obtain access to relevant and material facts in possession of the Government.

7 (14) Plaintiff's motion (#13) DENIED as proscribed by the stay order in paragraph #1 without prejudice to such relief as plaintiff may seek, pursuant to Rule 56(e) upon the hearing of the oral argument of the concurrent cross-motions. With respect to the related actions, the motion is denied as proscribed by paragraph "1" of the scheduling order.

7 (15) Barry E. Cohen of CROWELL & MORING filed notice to participate as amicus curiae through filing of a brief and participation in oral argument.

7 (16) LYNN S. BAKER and MICHAIL E. ROLL of KATTEN MUCHIN & ZAVIS filed notice that they will participate as amicus curiae on behalf of BAXTER HEALTHCARE CORPORATION, THE NUTRASWEET COMPANY AND NESTLE U.S.A. INC. through the filing of a single brief and participation in oral argument

7 (17) ROBERT E. BURKE of BARNES, RICHARDSON & COLBURN filed notice to participate as amicus curiae, in addition they wish to participate in oral argument.

15 (18) JOHN B. REHM and MUNFORD PAGE HALL, II of DORSEY & WHITNEY filed Notice to participate as amicus curiae, through the filing of a single brief and participation in oral argument.

16 (19) J. KEVIN HORGAN of DEKIEFFER DIBBLE & HORGAN filed notice to participate as amicus curiae, through the filing of a brief and participation in oral argument.

14 (20) MELVIN S. SCHWECHTER of LEBOEUF, LAMB, GREENE & MACRAE, filed notice to participate as amicus curiae through the filing of a brief and participation in oral argument, on behalf of ALUMINUM COMPANY of AMERICA ET AL., Pltfs in cases No. 95-01-00033 and 95-02-00163.

14 (21) Matthew McGrath of Barnes, Richardson & Colburn filed notice to participate as amicus curiae on behalf of Polaroid Corporation by filing a brief and appearing at oral argument.

13 (22) William Outman II of Baker and McKenzie filed a notice to participate as amicus curiae and appearing at oral argument.

17 (23) Equiptment & Parts Export, Inc., by its attorneys Donohue & Donohue filed a motion for leave to participate as an amicus curiae.

17 (24) Swisher International, by its attorneys McKenna & Cuneo filed a motion for leave to participate as an amicus Curiae.

24 (25) Defendant, U.S.A., filed opposition to Equiptment & Parts Export, Inc. and Swisher International's motion for leave to participate as amicus curiae.

28 (26) Equiptment and Parts Export, Inc.'s motion for leave to participate as an amicus curiae DENIED.

28 (27) Swisher International's motion for leave to participate as an amicus curiae DENIED.

Apr. 14 (28) General Chemical Corporation filed its amicus curiae brief.

14 (29) Texaco Refining and Marketing, Inc. filed its amicus curiae brief.

14 (30) Amoco Chemical Company filed its amicus curiae brief.

14 (31) Plaintiff, U.S. Shoe Corporation, filed its motion for summary judgment and brief in support.

14 (32) Polaroid Corporation filed its amicus curiae brief (BR&C)

14 (33) Defendant, U.S.A., filed its motion for Summary Judgment.

14 (34) Aris-Isotoner, by Neville, Peterson & Williams, filed Amicus Curiae brief

14 (35) Armstrong World Industries, by DeKieffer, Dibble & Horgan filed notice stating their agreement with the brief of plaintiff, U.S. Shoe Corporation, and withdrawal of intent to participate at oral argument.

14 (36) New Holland North America, by Dorsey and Whitney, filed brief indicating agreement with the brief of ptlf. U.S. Shoe Corporation.

14 (37) Allied Textiles Sales Company, by Irving A. Mandel, filed its amicus curiae brief.

14 (38) Baker & McKenzie; Leboeuf, Lamb Greene & MacRae and Crowell & Moring filed joint amicus curiae brief on behalf of their clients.

14 (39) Katten, Muchin & Zavis filed their amicus curiae on behalf of their clients.

14 (40) Grunfeld, Desiderio, Lebowitz & Silverman filed amicus curiae brief on behalf of their clients.

May 12 (41) Swisher International, by its attorneys McKenna & Cuneo, filed a motion for permission to appear as amicus curiae and participate in oral argument.

12 (42) Swisher International's motion for leave to participate as amicus and appear at oral argument GRANTED.

15 (43) Pltf filed response to Deft's proposed findings of uncontroverted fact.

15 (44) Deft filed response to Pltf's statement of material facts (Memorandum attached).

June 13 (45) Deft filed memorandum in opposition to briefs of amici curiae.

16 (46) Deft filed memorandum in opposition to briefs of amici curiae (corrected version).

26 (47) Deft filed compendium of materials relied upon by the USA.

July 12 (48) Transcript of Oral Argument of June 27, 1995 filed with the court.

Aug. 8 (49) Deft filed motion for leave to submit supplemental memorandum.

16 (50) Pltf's and amici curiae'e filed joint opposition to deft's motion for leave to submit supplemental memorandum.

22 (51) Deft's motion for leave to file a Supplemental Memo addressing the decision of the CAFC in *I.B.M. Corp v. United States*, No. 94-5164 (JULY 10/95) DENIED IN FULL.

Oct. 25 (52) Slip Op. 95-173 [On cross-motions, summary judgment for the plaintiff.]

Nov. 14 (53) Pltf filed proposed judgments.

13 (54) Deft's filed motion to stay pending appeal.

27 (55) Pltf Allied Textiles Sales Co., Inc. Et Al filed motion for permissive intervention under rule 24(b) to set aside the stay ordered in Slip Op. 95-23 for the purpose of

addressing class action issues and seeking appropriate relief thereunder.

27 (56) Deft filed its response to pltf's proposed judgment.

Dec. 1 (57) Pltf filed Opposition to Deft's Unauthorized Filing of a Response to Pltf's Proposed Judgment.

4 (58) Pltf filed opposition and amici curiae concurring opposition to Deft's motion for stay pending appeal.

5 Reassigned to Judge Restani and the stay is continued until further directions of the court.

4 (59) Slip Op. 95-199 [ORDERED] that Deft's motion is GRANTED and it is further ORDERED that execution of the money judgment awarded and the effect of the declaratory and injunctive relief granted are stayed until the later of (1) the expiration of the period for filing a notice of appeal; or (2) the conclusion of any appellate proceeding.

18 (60) TEXACO REFINING & MARKETING INC., ET AL., filed amici curiae's motion for permission to file a brief in opposition to motion of ALLIED

TEXTILE SALES CO., ET AL. and in opposition to motion to lift the say in BAXTER, ET AL., w/ Schedule.

4 (61) Slip Op. 95-197 [JUDGMENT] [ORDERED] that a money judgment is awarded Pltf in the amount of 8,281.87, together with interest and cost as provided by law.

1996

Jan. 5 (62) GENERAL CHEMICAL CORP. ET AL., filed memorandum in support of Pltf's motion for the award of prejudgment and postjudgment interest pursuant to Slip Op. 95-197.

5 (63) MONDIAL INTERNATIONAL CORP. ET AL., filed amicus curiae memorandum in support of Pltf's motion for prejudgment and postjudgment interest.

5 (64) BARNES, RICHARDSON & COLBURN counsel for AMOCO CHEMICAL CO., ET AL., filed amici curiae memorandum of law in support of order granting prejudgment and postjudgment interest on refunds of HMT illegally collected on export shipments.

5 (65) BAKER & MCKINZIE, CROWELL & MORING, DORSEY & WHITNEY,

McKenna & Cuneo and Leboeuf, Lamb Green & Macrae, L.L.P. on behalf of their respective clients filed brief of certain amici curiae concerning interest of refunds of HMT's.

5 (66) Neville, Peterson & Williams counsel for Aris-Isotoner, Inc., et al., filed brief of amici curiae concerning award of interest on judgment.

5 (67) Pltf filed motion for the award of prejudgment and postjudgment interest pursuant to Slip Op. 95-197.

5 (68) Pltf filed supplemental memorandum regarding post judgment interest w/ Schedule.

16 (69) Deft filed motion for EOT until Jan 26/96 to file its response to the motion for an award of interest and supporting briefs of Pltf's and amici.

22 (70) Deft's motion for EOT GRANTED ONLY UNTIL JANUARY 23, 1996 AND SHOULD BE PHYSICALLY FILED IN THE COURT BY 4:00 p.m.

23 (71) Deft's filed opposition to Pltf's motion for an award of pre-judgment and post-judgment interest.

Feb. 1 (72) Deft-USA filed NOTICE OF APPEAL.

7 (73) Slip Op. 96-32 [ORDERED] Interest on HMT payments challenged pursuant to 28 U.S.C. Sec 1581(i) may be awarded pursuant to 28 U.S.C. Sec. 2411. J/Restani

8 ALL PARTIES NOTIFIED.

14 Docketed at the CAFC as Appeal No. 96-1210

Mar. 10 (74) Letter to Judge dated 12-12-95 requesting status conference to address position of amici as to interest.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Docket No. 96-1210

UNITED STATES SHOE CORPORATION, PLAINTIFF

v.

UNITED STATES

DOCKET ENTRIES

1996

Feb. 1	Notice of appeal filed by Defendant in the US CIT.
13	Notice of appeal and certified list, received. COUNSEL FOR THE APPELLANT: Jeanne E. Davidson COUNSEL FOR THE APPELLEE: Brian S. Goldstein
23	Certificate of Interest for the Appellant, filed.
	Certificate of Interest for the Appellee, filed.
14	Notice of appeal and certified list, docketed. Notice sent to the parties.
21	Revised Official Caption sent to parties.

(1) Consent letters regarding Amicus Curiae's filing of brief. (MS-03/06/96) Received: 03/06/96 (EOD 03/06/96) (LP)

(2) Baxter Healthcar - Motion to Appear as amici curiae. (MS-03/13/96) Filed: 03/14/96. On consent. Action on motion (3): Granted. By Clerk. Filed: 03/14/96. (EOD 03/14/96 by LP)

(4) Amici - Consent Motion of Amoco Chenical Company to Appear as Amicus Curiae in support of Plaintiff-Appellee. (MS-03/25/96) Filed: 03/26/96. On consent. Action on motion (5): Granted. By clerk. Filed: 03/26/96. (EOD 03/26/96 by LP)

(5) Appellant - Motion Suspend Proceedings. (MS-04/04/96) Filed: 04/04/96. On consent. Action on Motion (7): Granted. By clerk. Filed: 04/05/96 (EOD 04/05/96 by LP)

(8) Rode & Qualey - Consent Motion to Appear as Amicus Curiae in support of Plaintiff-Appellee. (MS-04/10/96) Filed: 04/12/96. On consent. Action on Motion (9): Granted. By clerk. Filed: 04/12/96. (EOD 04/12/96 by LP)

(10) New Holland N.A. - Motion for Leave to Appear as Amicus Curiae in support of the Appellee. (MS-04/16/96) Filed: 4/16/96. On Consent. Action on Motion (10): Granted. By clerk. Filed: 4/18/96. (EOD 4/18/96 by AV)

(11) Amici - Consent Motion of Aris-Isotoner, Inc. and Other Exporters for Leave to Appear as Amicus Curiae in support of Appellee U.S. Shoe Corp. [NPF] (MS-04/16/96) Filed: 4/23/96. On Consent. Action on Motion (16): Motion granted. By clerk. Filed: 5/09/96. (EOD 5/09/96 by ETW)

(12) Aluminum Co. - Consent Motion to Appear as Amici Curiae in support of Plaintiff-Appellee. (MS-04/25/96) Filed: 4/25/96. On Consent. Action on Motion (13): Granted. By Clerk. Filed: 4/26/96. (EOD 4/26/96 by LP)

(14) EI Du Pont - Consent Motion to Appear as Amicus Curiae in support of Plaintiff-Appellee. (MS-05/07/96) Filed: 5/07/96. On Consent. Action on Motion (15): Granted. ByClerk. Filed: 05/08/96. (EOD 05/08/96 by LP)

(17) Companies - Consent Motion to Appear as Amici Curiae in Support of Plaintiff-Appellee. (HS-05/13/96) On consent. Action on motion (18): Granted. By clerk. Filed: 05/14/96. (EOD 05/14/96 by LP)

(19) Swisher - Consent Motion for Leave to Appear as Amicus Curiae in Support of Partial Reversal of the Decision by the Court of International Trade. (MS-05/08/96) Filed: 05/08/96. On consent. Action on Motion (20): Granted. By

clerk. Filed: 05/14/96. (EOD 05/14/96 by LP)

(21) Allied - Consent Motion to Appear as Amicus Curiae in Support of Plaintiff-Appellee. (MS-05/13/96) Filed: 05/15/96. On consent. Action on Motion (22): Granted. By clerk. Filed: 05/16/96 (EOD 05/16/96 by LP)

(23) Amicus (Aris-Isotoner) Ltr. authorizing clk.'s ofc. to correct its E.O.A. (FS-05/22/96) Received: 05/22/96 (EOD 05/22/96) (AV)

(24) Attorney Arthur K. Purcell's Ltr confirming telephone inquiry regarding the entry of appearance. (Noted by clerk of the court) (FS-05/22/96) Received: 05/23/96 (EOD 05/28/96) (LP)

(25) Movant - Consent Motion to Appear as Amici Curiae in Support of Plaintiff-Appellee. (MS-05/28/96) Filed: 05/29/96. On consent. Action on motion (26): Granted. By clerk. Filed: 05/29/96 (EOD 05/29/96 by LP)

(27) Amicus - Motion for Substitution of Counsel. (MS-06/26/96) Filed: 06/27/96. On consent. Action on motion (28): Granted. By clerk. Filed: 06/27/96. (EOD 06/27/96 by LP)

(29) Amicus - Motion to Withdraw as counsel for Amicus Curiae, The Nutrasweet Company. (MS-07/02/96) Filed: 07/03/96. On consent. Action on

Motion (30): Granted. By clerk. Filed: 07/05/96. (EOD 07/05/96 by LP)

New Holland North America, Inc. [Amicus] - Brief of Amicus Curiae New Holland North America, Inc. in Support of Plaintiff-Appellee United States Shoe Corporation (MS-08/22/96). Filed: 08/22/96. [961739] (EOD 08/22/96 by SPP)

Boise Cascade, et al. [Amici] - Brief for Amici Curiae Boise Cascade, Etonic, Inc., Germain-Webber Lumber Co., International Veneer Co., Mondial International Corp., and the Heil Co. urging Affirmance (MS-08/21/96). Filed: 08/21/96. [961741] (EOD 08/22/96 by SPP)

Allied Textile Sales Company [Amicus] - Brief of Amicus Curiae Allied Textile Sales Company for Affirmance of the Judgment Under Review (MS-08/21/96). Filed: 08/21/96. [961743] (EOD 08/23/96 by SPP)

Texaco Refining and Marketing, Inc. et al. [Amici] - Brief of Amici Curiae Texaco Refining and Marketing, Inc. et al., urging Affirmance of the Decision of the Court of International Trade (MS-08/21/96). Received: 08/22/96. Rejected: 08/23/96. Corrected brief due: 09/06/96. [961744] (EOD 08/23/96 by SPP)

Aris-Isotoner, Inc., et al. [Amici] - Brief on behalf of Amici Curiae Aris-Isotoner, Inc., et al., in support of Affirmance (MS-08/21/96). Filed: 8/21/96. Entry of Appearance Notice issued. [961748] (EOD 08/23/96 by SPP)

U.S. [Appellant] - Brief for Defendant-Appellant the United States (MS-07/10/96). Filed: 07/10/96. [961329] (EOD 07/11/96 by SPP)

(31) Amicus - Motion of Swisher for Leave to Include a Copy of Its Complaint in the Court of International Trade as an Addendum to its amicus brief. (MS-07/10/96). Filed 07/10/96. Reply 1 (32) Filed: 07/19/96. Action on Motion (35): Motion Denied. By Motions Panel. Judge: Lourie. Filed: 08/23/96 by ETW)

(33) Attorney (Irvin A. Mandel) Ltr to Court Regarding this Appeal (Sent to SSA) (MS-07/17/96). Mailed: 07/22/96. 36. Ltr to A. Mandel: U.S. filed first brief on 7/10/96. See FRAP 29 Governing Briefing Schedules. By: Clerk. 08/23/96 (EOD 08/23/96) (ETW)

(34) MTS - Motion for Leave to File Brief as Amicus Curiae. (MS-08/16/96). Filed: 08/19/96. Action on Motion (37): Motion Denied. By Motions Panel. Judge: Lourie. Filed: 08/30/96. (EOD 08/30/96 by ETW)

The National Industrial Transportation League [Amicus] - Brief of Amicus Curiae the National Industrial Transportation League Urging Affirmance of the Decision Below (MS-08/19/96). Received: 08/19/96. Rejected: 08/20/96. Corrected brief due: 09/03/96. [961711] (EOD 08/20/96 by SPP)

Aug. 20 General Chemical Corp., et al. [Amici] - Brief of Amici Curiae on Behalf of General Chemical Corp., et al., in Support of Affirmance (MS-08/20/96). Filed: 08/20/96. Entry of Appearance Notice Issued. [961723] (EOD 08/21/96 by SPP)

22 United States Shoe Corporation [Appellee] - Brief for Plaintiff-Appellee United States Shoe Corporation (MS-08/22/96). Filed: 08/22/96. [961733]. (EOD 08/22/96 by SPP)

Baxter Healthcare Corporation and Nestle U.S.A., Inc. [Amici] - Brief of Amici Curiae Baxter Healthcare Corporation and Nestle U.S.A., Inc. Urging Affirmance (MS-08/21/96). Filed: 08/21/96. [961734] (EOD 08/22/96 by SPP)

Aluminum Company of America et al. [Amici] - Brief of Amici Curiae Aluminum Company of America et al., Brown-Forman Corp., et al., and E.I. Du Pont De Nemours & Co., Urging Affirmance of the Decision of the

USITC (MS-08-22-96). Filed: 08/22/96. Entry of Appearance Notice Issued. [961736] (EOD 08/22/96 by SPP)

Amoco Chemical Company [Amicus] - Brief for Amicus Curiae Amoco Chemical Company Urging Affirmance of Judgment Below (MS-08/22/96). Filed: 08/22/96. [961738] (EOD 08/22/96 by SPP)

The National Industrial Transportation League [Amicus] - Corrected Brief of Amicus Curiae the National Industrial Transportation League Urging Affirmance of the Decision Below (MS-08/26/96). Corrected Brief Received: 08/26/96. Filed: 08-19/96. [961711] (EOD 08/27/96 by SPP)

(30) Swisher International, Inc. [Amicus] - Corrected Brief of Amicus Curiae Swisher International, Inc. for Reversal of the Judgment Under Review (MS-08/30/96). Received: 08/30/96. Rejected: 09/03/96. Corrected brief due: 09/17/96. [961801] (EOD 09/03/96 by SPP)

Texaco Refining and Marketing, Inc. et al. [Amici] - Corrected Brief of Amici Curiae Texaco Refining and Marketing, Inc. et al., Urging Affirmance of the Decision of the Court of International Trade (MS-08/30/96). Corrected brief received: 09/03/96.

Filed: 08/21/96. [961744] (EOD 09/05/96 by SPP)

(38) Appellant - Motion for an Enlargement of Time. (MS-09/06/96) Filed: 09/06/96. On consent. Action on Motion (39): Granted. By clerk. Filed: 09/10/96. (EOD 09/10/96 by LP) The brief is due on 10/01/96.

Swisher International, Inc. [Amicus] - Corrected Brief of Amicus Curiae Swisher International, Inc. for Reversal of the Judgment Under Review (MS-09/16/96). Corrected brief received: 09/16/96. Filed: 07/10/96. [961801] (EOD 09/16/96 by SPP)

(40) Appellant - Motion to File an Extended Reply Brief. (MS-09/24/96) Filed: 09/24/96. Reply 1 (41) Filed: 10/03/96. Action on Motion (42): Motion granted. Copy of this order shall be transmitted to merits panel assigned to hear this case. By motions panel. Judge: Plager. Filed: 10/11/96 (EOD 10/11/96 by ETW)

Oct. 2 Reply brief for appellant (27 pages), received. (MS-10/1) (sp)

US [Appellant] - Joint Appendix (MS-10/08/96). Filed: 10/08/96. [972101] (EOD 10/11/96 by SPP)

US [Appellant] - Reply Brief of Defendant-Appellant the United States (MS-10/01/96). Filed: 10/11/96. [972114] (EOD 10/11/96 by SPP)

(43) Ltr to parties: Any amicus curiae wishing to take part in oral argument should file a corresponding motion for consideration by the merits panel assigned to hear this case. Not served. Mailed: 10/15/96 (EOD 10/15/96) (LP)

(44) Amici - (Swisher) Motion For Leave to Participate in Oral Argument. [NPF] (MS-10/29/96) Filed: 10/29/96. Reply 1 (47) Filed: 11/12/96. Action on Motion (44): Denied. By Merits Panel. Filed: 01/23/97. (EOD 01/23/97 by KSH)

(45) Amici - Motion to Participate in Oral Argument in Support of Appellee (MS-10/30/96) Filed: 10/29/96. Reply 1 (47) Filed: 11/12/96. Action on Motion (45): Denied by Merits Panel. Filed: 01/23/97. (EOD 01/23/97 by KSH)

(46) Amici - Motion for Leave to Participate in Oral Argument. (MS-10/29/96) Filed: 10/30/96. reply 1 (47) Filed: 11/12/96. Action on Motion (46): Denied By Merits Panel. Filed 01/23/97. (EOD 01/23/97 KSH)

(48) Amicus - Consent Motion of Amoco Chemical Co. to Participate in Oral Argument in Support of Appellee. (MS-11/14/96) Filed: 11/14/96. On Consent. Action on Motion (48): Denied By Merits Panel. Filed: 01/23/97. (EOD 01/23/97 by KSH)

(49) Amicus - Motion of New Holland North America, Inc. to Present Oral Argument. (MS-11/08/96) Filed: 11/14/96. Action on Motion (49): Denied By Merits Panel. Filed: 01/23/97. (EOD 01/23/97 by KSH)

(50) Amicus - (Aris-Istoner Inc.) Motion for Leave to Participate in Oral Argument [NPF] (MS-11/14/96) Filed: 11/14/96. Action on Motion (50): Denied By Merits Panel. Filed: 01/23/97. (EOD 01/23/97 by KSH)

1997

Jan. 3 (51) Calendaring Notice Issued. Panel 02 K+ on February 7, 1997.

Feb. 7 Submitted after ORAL ARGUMENT by David M. Cohen and Brian S. Goldstein

(Mayer Smith, Michel Rader and Bryson)

Affirmed. Precedential opinion by: J. Michel. Dissenting Opinion by: J. Mayer. Judgment entered: 06/3/97. Costs against appellant. (EOD 06/03/97 by KSH) (Amici curiae were served with copies of opinion)

(52) Appellee's ltr to Court apprising them of an error in the opinion of the Court. (Sent to panel) (HS-06/05/97) Received: 06/05/97 54. Errata Sheet sent to parties on 06/16/97. Filed: 06/13/97 (EOD 06/16/97) (KSH)

(53) Appellees' Bill of Costs Against Appellant. (MS-06/13/97) Filed: 06/13/97. (EOD 06/13/97 by LRP)

(54) Appellant - Motion to Stay the Mandate. (MS-06/24/97) Filed: 06/24/97. Reply 1 (55) Filed: 07/03/97. Action on Motion (56): Granted. By Merits Panel. Filed: 07/14/97 (EOD 07/14/97 by LP)

Petition for Writ of Certiorari filed 08/29/97, Supreme Court #: 97-372. (EOD 09/25/97 by JW)

UNITED STATES COURT OF
INTERNATIONAL TRADE

Docket No. 94-11-00668

UNITED STATES SHOE CORPORATION, PLAINTIFF

v.

UNITED STATES, DEFENDANT

COMPLAINT

Plaintiff, United States Shoe Corporation, by its attorneys, Siegal, Mandell & Davidson, P.C., for its complaint herein alleges upon information and belief as follows:

This action challenges the harbor maintenance fee ("HMF"), imposed under 26 U.S.C. § 4461, as applied to plaintiff's exports from the United States by sea as being unconstitutional under Article 1, Section 9, Clause 5 (the "export clause") of the United States Constitution which provides that "No Tax or Duty shall be laid on Articles exported from any State."

JURISDICTION

1. This Court possesses exclusive jurisdiction over this action by reason of 28 U.S.C. § 1581(a) or, alternatively, 28 U.S.C. § 1581(i)(1), (2) and (4).

2. The Court possesses jurisdiction by reason of 28 U.S.C. §1581(a) as the protest whose denial gave rise to this civil action was timely filed (see attached

protest denial letter from United States Customs Service), and plaintiff filed a timely summons after denial of said protest.

3. The Court, alternatively, possesses jurisdiction by reason of the express mandate of Congress within 26 U.S.C. § 4462(f) and by reason of 28 U.S.C. § 1581(i)(1), (2) and (4) because this action arises out of a law of the United States providing for the assessment of Customs duties (see paragraphs 4-5 below) and relates to the collection and administration of such Customs duties, as well as relating to tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue and the administration and enforcement of such matters (thus invoking jurisdiction under 28 U.S.C. § 1581(i)(1), (2) and (4)); the summons and complaint in this action were filed (*i.e.*, the action was commenced) within two years after the date that the cause of action accrued in accordance with 28 U.S.C. § 2636(i).

4. With respect to the Court's jurisdiction over this action, plaintiff notes that 26 U.S.C. § 4462(f) provides, in connection with the HMF, that:

(f) Extension of provisions of law applicable to customs duty.—

> (1) In general.—Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs laws and regulations shall apply in respect of the tax imposed by this subchapter (and in respect of persons liable therefor) as if such tax were a customs duty. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be

treated as not less than the amount which bears a similar relationship to the value of the cargo.

(2) Jurisdiction of courts and agencies.—For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, the tax imposed by this subchapter shall be treated as if such tax were a customs duty.

5. Furthermore, the legislative history to the Act provides that "for purposes of determining the jurisdiction of U.S. courts and agencies, the port user charges are to be treated as customs duties. Thus, the Court of International Trade is to have primary jurisdiction for actions involving the port user charge provisions." H.R. Rep. No. 228, 99th Cong., 2nd Sess. 10 (1986), *reprinted in* 1986 U.S.C.C.A.N. 6705, 6715.

6. This Court has recently ruled in *Carnival Cruise Lines Inc., et al. v. United States*, 18 CIT ____, Slip Op. 94-169 (October 21, 1994) that it has jurisdiction pursuant to 28 U.S.C. § 1581(i)(2) to review claims involving the Harbor Maintenance Fee Act. The Court specifically stated in *Carnival Cruise Lines*, Slip Op. 94-169 at 11 (emphasis added):

> Congress intended that such [harbor maintenance] fees be treated as customs duties with all of the attendant administrative, enforcement and judicial processes concerning such duties. 26 U.S.C. §§ 4462(f)(1)-(2). That such processes most often deal with goods and not services is of little moment when applying this Court's jurisdictional provisions to the Harbor Maintenance Revenue Act. *The terms of section 1581(i)(2) embrace this Act.*

STANDING

7. Plaintiff has standing to bring the instant action as it is an exporter of merchandise from the United States and has paid Harbor Maintenance Fees to the United States Customs Service in connection with such exportations (such payments are specifically delineated on the annexed schedule). Plaintiff herein is challenging the legality of the imposition of the harbor maintenance fee on its exportations.

BACKGROUND

8. In 1986, Congress enacted the Water Resources Development Act of 1986 (Pub. L. No. 99-662, 100 Stat. 4082), which provided at Section 1402 of the Act for the imposition of a Harbor Maintenance Tax. Specifically, the Act amended Chapter 36 of the Internal Revenue Code of 1954 (relating to "certain other excise taxes") by inserting a new subchapter pertaining to Harbor Maintenance Tax.

9. The statutory provisions imposing the HMF (26 U.S.C. §§ 4461 and 4462) in their current formulation provide:

§ 4461. Imposition of Tax

(a) General rule.—There is hereby imposed a tax on any port use.

(b) Amount of tax.—The amount of the tax imposed by subsection (a) on any port use shall be an amount equal to 0.125 percent of the value of the commercial cargo involved.

(c) Liability and time of imposition of tax.—

(1) Liability.—The tax imposed by subsection (a) shall be paid by—

(A) in the case of cargo entering the United States, the importer,

(B) in the case of cargo to be exported from the United States, the exporter, or

(C) in any other case, the shipper.

(2) Time of Imposition.—Except as provided by regulations, the tax imposed by subsection (a) shall be imposed—

(A) in the case of cargo to be exported from the United States, at the time of loading, and

(B) in any other case, at the time of unloading.

§ 4462. Definitions and special rules

(a) Definitions.—For purposes of this subchapter—

(1) Port use.—The term "port use" means—

(A) the loading of commercial cargo on, or

(B) the unloading of commercial cargo from, a commercial vessel at a port.

* * *

(5) Value.—

(A) In general.—The term "value" means, except as provided in regulations, the value of any commercial cargo as determined by standard commercial documentation.

10. With respect to the payment of HMF in connection with exportations from the United States, 19 C.F.R. § 24.24(e)(2)(ii) and (f) provide:

(ii) *Fee payment.* The exporter whose name appears on the SED or equivalent documentation shall pay the accumulated fees on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for which he is liable for the quarter to U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673-0915...

* * *

(f) *Quarterly payments.* All quarterly payments required by this section must be received no later than 31 days after the close of the quarter being paid. Quarterly periods end on the last day of March, June, September, and December.

11. HMF payments made in connection with exports from the United States are made on a quarterly basis. Quarterly payments are due no later than 31 days after the close of the quarter being paid, and such payments have been made by plaintiff.

12. The HMF is assessed on the value of commercial cargo loaded or unloaded from a commercial vessel. The HMF is an *ad valorem* fee, currently at 0.125 percent of the value of the cargo (prior to January 1, 1991, HMF was assessed at 0.04 percent of this value). The HMF is assessed on cargo imports, exports, domestic movements, admissions into foreign trade zones, and on arriving passengers aboard commercial vessels.

13. The statutory provision requiring the payment of HMF specifically provides that the amount of the tax imposed will be equal to a specific percentage of the value of the commercial cargo involved.

14. 19 C.F.R. § 24.24(e)(2)(i) specifically provides that, in the instance of exportations, the fee is based upon the value of the shipment loaded as required to be indicated on the Shipper's Export Declaration ("SED") or equivalent documentation. Accordingly, the determination of the fee to be paid is directly related to the information set forth on the SED, the document required in most instances for exportation from the United States. In the instance of cargo exported from the United States, it is specifically the exporter who is liable for payment of the HMF.

15. It is evident from the plain language of the HMF statute that it is a "tax." It is specifically listed as an "excise tax" within the Internal Revenue Code. 26 U.S.C. § 4461. In the instant context, the HMF is also considered to be a Customs "duty" (as discussed above at paragraphs 4-5).

16. The HMF is a tax or duty on articles exported from the United States. It is the value of the commercial cargo to be exported which determines the amount of tax or duty to be paid, and thus the HMF is directly connected to the export of merchandise. No tax or duty will be imposed without the act of loading cargo on to a vessel for exportation. HMF calculation and the amount due are inextricably tied to the export process and documentation; without the act of exporting and necessary documentation, the amount of HMF owing could not be determined.

CAUSE OF ACTION

17. Paragraphs 1 through 16 are repeated with the same force and effect as if fully stated herein.

18. The HMF is a tax or duty on exports which must be invalidated by the export clause of the Constitution which prohibits any tax or duty on exports from the United States.

19. The prohibition contained in the export clause refers to the imposition of taxes or duties on goods by reason of or because of their exportation, or intended exportation, or while they are being exported, (*i.e.*, they are in the course of transportation). The tax or duty immunity runs to the process of exportation and the transactions and documents embraced in it.

20. The HMF is in substance and effect equivalent to a tax or duty on the articles exported, and thus prohibited by the export clause. The HMF as applied to exports from the United States is clearly embraced within the constitutional prohibitions of the export clause.

21. The export process begins at the time of loading cargo. In the case of HMF, the tax is specifically imposed at the time of loading cargo.

22. The HMF amount due is inextricably tied to the export process and its necessary documentation, as the "value" for purposes of determining the HMF due is the value of the cargo as determined by standard commercial documents. It is the exporter of the subject merchandise who is liable for the fee rather than any other party (*e.g.*, a vessel operator); specifically, it is the party named on the SED or similar documentation that is liable.

23. In sum, the HMF, as applied to plaintiff's exports from the United States by sea, is unconstitutional under Article 1, Section 9, Clause 5 of the Constitution which provides that "No Tax or Duty shall be laid on Articles exported from any State."

24. Plaintiff has paid harbor maintenance fees which are not required by law, in that they relate to export cargo. Plaintiff has calculated that for the period April 1, 1994 through June 30, 1994 it paid harbor maintenance fees (in connection with export cargo) in the total amount of $8,281.87; the attached schedule specifically delineates plaintiff's payments. This total amount should be refunded in full together with appropriate interest to plaintiff.

REQUEST FOR JUDGMENT AND RELIEF

WHEREFORE, plaintiff respectfully requests that this Court enter a judgment and order against the defendant declaring that the Harbor Maintenance Fee as assessed against plaintiff's exports is unconstitutional and that all HMF payments made by plaintiff, as delineated on the annexed schedule, be refunded with appropriate interest, costs and attorney's fees, and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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By:
/s/ BRIAN S. GOLDSTEIN
BRIAN S. GOLDSTEIN, Esq.

By:
/s/ LAURENCE M. FRIEDMAN
LAURENCE M. FRIEDMAN, Esq.

[Seal omitted]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
INDIANAPOLIS, INDIANA

[Oct. 25, 1994]

PRO 2-06:OF:N:RA:FS JD

Siegel, Mandell & Davidson, P.C.
1515 Broadway, 43rd Floor
New York, New York 10036

Dear Sir/Madam:

The U. S. Customs Service has received, and has assigned protest number 992094100245 to the protest filed on behalf of United States Shoe Corporation, which claims that the Harbor Maintenance Fee on exports is unconstitutional.

This protest is denied in full because:

1. ___ It is incomplete.

2. ___ It was untimely filed.

3. _x_ The Harbor Maintenance Fee is not an unconstitutional tax on articles exported from any state, but, rather, the tax is a statutorily mandated fee assessment levied on Port users in order to maintain and preserve United States Ports and Waterways. (2nd Quarter(s) 1994)

Please be advised that you may file a civil action contesting the denial of this protest under 19 U.S.C. 1514 in the Court of International Trade.

Sincerely,

/s/ JOHN V. [illegible]
JOHN V. [illegible]
for Thomas E. Diaforli
Director, National Finance
Center

UNITED STATES SHOE CORPORATION

SCHEDULE OF HARBOR MAINTENANCE FEE PAYMENTS

QUARTER END	HMF PAID	CHECK NUMBER	CHECK DATE
6/30/94	$8,281.87	007344	7/19/94

[Feb. 16, 1993]

FIRST ANNUAL REPORT TO CONGRESS
ON THE
STATUS OF THE HARBOR MAINTENANCE
TRUST FUND
FISCAL YEARS 1987 - 1992

BACKGROUND

1. Introduction. This report is being provided in compliance with Section 330 of the Water Resources Development Act of 1992, Public Law 102-580. Since this is the first annual report to Congress on the status of the Harbor Maintenance Fee and Trust Fund, more detail is provided on the background of the fee, how projects "eligible" for cost recovery were identified, and how "eligible operations and maintenance costs" were defined. This initial report will cover the history of the Harbor Maintenance Fee and Trust Fund since its inception in 1986 through Fiscal Year (FY) 1992. Future reports will address only the fiscal year being reported.

2. Authorization of Fee. The Harbor Maintenance Fee was authorized under Sections 1401 and 1402 of the Water Resources Development Act of 1986. Public Law 99-662. This law imposed a 0.04 percent fee on the value of commercial cargo loaded (exports and domestic cargo) or unloaded (imports) at ports which have had Federal expenditures made on their

behalf since 1977 for construction, operation, or maintenance. The effective date of this fee was April 1, 1987. A copy of this law may be found at Appendix A. Federal expenditures for these purposes were determined to be synonymous with expenditures made by the Army Corps of Engineers. The Harbor Maintenance Fee and Trust Fund are administered by the Department of Treasury, in particular the U. S. Customs Service, in cooperation with the Army Corps of Engineers.

3. Initial Level of Recovery. The intention of Section 210 of Public Law 99-662 was to recover 100 percent of the eligible operations and maintenance (O&M) costs of the United States portion of the Saint Lawrence Seaway and up to 40 percent of the Army Corps of Engineers O&M expenditures made on behalf of commercial users of U.S. channels and harbors. The 0.04 percent *ad valorem* rate was based on estimated levels of recovery, at the time of implementation, of approximately $160 million per year. Collections during the first three full years of implementation at the 0.04 percent rate, FY 1988 through FY 1990, averaged $160.3 million.

4. Current Level of Recovery. Section 11214 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-580, increased the Harbor Maintenance Fee to 0.125 percent, and this increase went into effect on January 1, 1991. Section 316 of the Water Resources Development Act of 1990, Public Law 101-640, authorized recovery of up to 100 percent of the Corps eligible O&M expenditures. Collections at the new rate of 0.125 percent were projected to be $580 million for FY 1992. Although actual 1992 collections were about $46 million less than anticipated, they were sufficient to

reimburse the Corps for 100 percent of its FY 1991 expenditures made on behalf of commercial navigation, because actual expenditures also were less than that anticipated at the time the 0.125 percent rate was established. It is timely to mention that the 0.125 percent *ad valorem* fee also includes a provision to reimburse the National Oceanic and Atmospheric Administration (NOAA) on an annual basis approximately $45 5 million (an amount equivalent to a 0 01 percent *ad valorem* fee) for its activities pertaining to commercial navigation. Whereas collections occurred, the authority to withdraw these funds from the Harbor Maintenance Trust Fund has never been obtained by NOAA and this revenue has been accumulating in the Trust Fund since January 1, 1991.

COSTS ELIGIBLE FOR RECOVERY

5. Defining Expenditures Eligible for Recovery. Section 210 of Public Law 99-662 authorizes appropriations out of the Harbor Maintenance Trust Fund for 100 percent of the "eligible operations and maintenance costs of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation" and "not more than 40 percent" (later changed to 100 percent) "of the eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States." The following paragraphs described how those costs are defined and accounted for within the context of Section 210.

6. Army Corps of Engineers Projects Eligible for Cost Recovery. Section 210 of Public Law 99-662 refers to the payment of such sums as may be necessary to pay for "eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States." The term "commercial navigation" referenced in Section 210 was determined to mean any project authorized by Congress with "commercial navigation" as an authorized purpose. Operations and maintenance costs for these projects are accounted by the Corps of Engineers Management Information System (COEMIS). A complete list of these projects may be found at Appendix B, along with the February 13, 1987, transmittal letter from the Assistant Secretary of the Army (Civil Works) to the Assistant Commissioner, Office of Commercial Operations of the U.S. Customs Service, Department of the Treasury. Many of these projects date back to the early 1900's and no longer are maintained. Nevertheless, 971 "commercial navigation" projects were identified, these were further stratified as shown below:

Army Corps of Engineers
Civil Works Projects with Navigation as an Authorized Purpose
FY 1977 through FY 1988

Zero-cost Projects (since FY 1977)	179
Deep Draft Operations and Maintenance Projects	297
Inland Waterways Projects Subject to Fuel Tax	97
Shallow Draft Projects not Subject to Fuel Tax	378
Additional Deep Draft Construction Projects	12
Additional Shallow Draft Construction Projects	8
Total	971

Zero-cost projects, or those which have had no operations and maintenance expenditures since FY 1977, were exempt under Public Law 99-662. Since this law also exempted any cargo having been transported on a fuel taxed waterway (defined in Section 206 of Public Law 95-502), these costs also were excluded from the universe of projects subject to recovery. Any remaining projects were considered to be subject to cost recovery under the law.

7. Army Corps of Engineers Expenditures Eligible for Recovery. Many projects with "commercial navigation" as a project purpose have other authorized purposes as well. Such purposes include recreation, hydropower, flood control, water supply, and the like. Typically, deep draft port projects are single purpose (commercial navigation) projects, although a few also are authorized for recreation. All O&M expenditures made on behalf of single purpose commercial navigation projects were considered subject to recovery. Joint-use costs were allocated to the project's various purposes in proportion to the benefits realized for each purpose. Appendix C displays annual O&M expenditures eligible for reimbursement from the Harbor Maintenance Trust Fund since FY 1987. Appendix C differentiates deep draft projects (greater than 14 feet) from shallow draft projects (14 feet and less). These are identified by state, by port, and by project where the project name differs from that of the port or where a port may consist of more than one project. These expenditures, as shown in Appendix C, were calculated after the close of the fiscal year and after careful review for accuracy. Because such a thorough review cannot be completed until several months after the close of the fiscal year,

the actual transfer of funds from the Harbor Maintenance Trust Fund is for expenditures made in the previous fiscal year. In other words, FY 1990 expenditures are shown as transfers from the Harbor Maintenance Trust Fund in FY 1991, and so forth. Corps expenditures are never made directly from the Trust Fund, nor are transfers made on the basis of estimates or projections.

8. Other Expenditures Eligible for Cost Recovery. The Army Corps of Engineers is by far the largest user of the Harbor Maintenance Trust Fund. The operations and maintenance costs of the St. Lawrence Seaway average between $9-13 million per year. Seaway tolls for that portion under United States jurisdiction are deposited into the Harbor Maintenance Trust Fund and later rebated to vessel operating companies applying for said rebates. The Department of Treasury withdraws about $200,000 per year for administering the Trust Fund. Harbor Maintenance Fee revenues and Trust Fund withdrawals will be discussed in the following sections of this report.

HARBOR MAINTENANCE FEE REVENUES

9. Collections and Receipts. All commerce subject to the Harbor Maintenance Fee (imports, exports, and domestic) incurs the same 0.125 percent *ad valorem* fee. The principal source of revenue paid into the Harbor Maintenance Trust Fund comes from imports. This is because imports tend to consist of high value commodities (e.g., electronics, automobiles, petroleum, metal products, etc.) while U. S. exports and domestic cargo generally are lower value cargo (e.g.,

grain, coal, paper, and wood products). The following table shows revenue paid into the Harbor Maintenance Trust Fund since its inception. The fee revenue reported below is obtained from the U. S. Customs Service, and it represents actual collections through the last day of each fiscal year. (Total revenue shown in this table may differ from that shown in the Budget of the United States, since budgetary data must rely on revenue estimates prepared weeks or months before the close of the fiscal year.) Only the U. S. Customs Service reports revenue by source—critical information for monitoring receipts and estimating compliance. As of the close of FY 1992, the U. S. Customs Service shows Harbor Maintenance Fee collections (from FY 1987 through FY 1992) to be some $26,592,000 greater than reported by the Department of Treasury's Financial Management Services. It is anticipated that an adjustment for this difference will be made in FY 1993 by the Department of Treasury.

Harbor Maintenance Fee and Trust Fund
Revenue by Source
FY 1987 through FY 1992
(thousands of dollars)

	FY 1987	FY 1988	FY 1989
Tax on Imports	$43,249	$99,793	$105,927
Tax on Exports	6,777	35,938	44,618
Tax on Foreign Trade Zones	677	3,102	3,875
Tax on Domestics	2,414	9,170	8,590
Tax on Passengers	120	551	666
NET COLLECTIONS	$53,237	$148,554	$163,677

	FY 1990	FY 1991	FY 1992
Tax on Imports	$109,215	$258,321	$342,402
Tax on Exports	45,808	93,194	142,916
Tax on Foreign Trade Zones	4,020	9,166	16,974
Tax on Domestics	9,069	19,518	28,451
Tax on Passengers	559	1,977	3,275
NET COLLECTIONS	$168,671	$382,176	$534,018

Source. Office of Inspection and Control, U. S. Customs Service, Department of Treasury

10. Enforcement, Collections, and Shortfalls. Of all of the revenue sources above, imports are probably the most reliable and accurate. This is because the Harbor Maintenance Fee on imports is collected in conjunction with the U. S. Customs fee. The mechanism for administrating, collecting, and enforcing customs fees is well established and well enforced. Although Shipper Export Declarations routinely are reported to the Department of Commerce, the penalties associated with the non-reporting or under-reporting of export values was of minimal consequence prior to the implementation of the Harbor Maintenance Fee. Domestic shippers have had even less experience. Although domestic vessel operators routinely report tonnage movements to the Army Corps of Engineers Waterborne Commerce Statistical Center, value of cargo has never been reported, and the data have been used for statistical purposes only. Reporting is good, but essentially voluntary. Based on the type and volume of commerce compared

with revenue paid by these two sectors, there appears to be significant shortfalls from domestic shippers and, to a lesser extent, from exporters. This is further supported by the level of increases in revenue from these sources between FY 1991 and FY 1992. While remembering that the *ad valorem* fee increased from 0.04 percent to 0.125 percent on January 1, 1991, revenue for imports increased some 32 percent, while revenue from exports increased 53 percent and revenue from domestic shippers increased 45 percent. Whereas the disproportional increases in these two sectors compared to imports is encouraging, there still appears to be shortfalls. Many factors can affect these revenue totals. Trends in tonnage growth (decline) and even changes in the value of the dollar can contribute to variations in revenue by source. Actual FY 1992 collections of $534 million were some $46 million (or about 8.6 percent) less than projected. It is believed that further improvements in export and domestic collections can be realized with better administration and enforcement.

11. Funding for Administrative Costs. Section 1403 of Public Law 99-662 created the Harbor Maintenance Trust Fund (by amending subchapter A of Chapter 98 of the Internal Revenue Code of 1954). This section also authorized the Department of Treasury to obtain, annually, up to $5 million to administer the Harbor Maintenance Fee and Trust Fund. This money was to be appropriated from the Merchandise Processing Fee authorized under the Consolidated Omnibus Budget Reconciliation Act of 1985. The use of funds from this source for administrating the Harbor Maintenance Fee, however, was found in violation of the General Agreement on Tariff

and Trade (GATT) in 1987. Since that date, no funds have been available for administering the Harbor Maintenance Fee and Trust Fund. Several attempts have been made to introduce legislation which would allow the $5 million to be appropriated from the Harbor Maintenance Trust Fund; however, none has succeeded. Without resources to properly administer the Harbor Maintenance Fee and Trust Fund, shortfalls as described above are expected to continue.

HARBOR MAINTENANCE TRUST FUND

12. Transfers From the Harbor Maintenance Trust Fund. Transfers from the Harbor Maintenance Trust Fund to the Department of Transportation's Saint Lawrence Seaway Development Corporation and to the Army Corps of Engineers are shown in the following table. Details concerning the expenditures of the Army Corps of Engineers may be found in Appendix C.

Appropriations from
Harbor Maintenance Trust Fund
FY 1987 through FY 1992
(thousands of dollars)

	FY 1987	FY 1988	FY 1989
Corps of Engineers	$35,000.0	$148,000.0	$159,026.0
St. Lawrence Seaway	4,000.0	9,424.0	10,382.0
SLS Toll Rebates	3,997.8	8,894.5	10,977.3
Dept. of Transportation*	0.0	0.0	0.0
Administration Costs	0.0	142.1	167.3
NET APPROPRIATIONS	$42,997.8	$166,460.7	$180,552.7

	FY 1990	FY 1991	FY 1992
Corps of Engineers	$159,073.7	$333,401.5	$462,229.2
St. Lawrence Seaway	11,397.0	9,075.0	10,949.9
SLS Toll Rebates	9,041.5	10,297.8	9,579.0
Dept. of Transportation*	0.0	0.0	16.0
Administration Costs	168.6	186.3	170.0
	$179,680.8	$352,960.5	$482,944.1

Source. Funds Accounting Branch, Financial Management Services, Department of Treasury

* Payment of rent for the St. Lawrence Seaway Development Corporation as authorized by Title 1, Public Law 102-143.

13. Status and Balances in the Harbor Maintenance Trust Fund. The following table summarizes the revenues received into the Harbor Maintenance Trust Fund, and appropriations from the Trust Fund, since its inception in FY 1987. The table is prepared from data provided by the Funds Accounting Branch, Financial Management Services, of the Department of Treasury. Revenues shown in this table may not agree with actual collections reported by the U.S. Customs Service. However, the Financial Management Services, Department of Treasury, is the official source of Trust Fund balances and expenditures and is the only source of obtaining interest income and disbursements attributed to the Harbor Maintenance Trust Fund.

Harbor Maintenance Trust Fund
Revenues and Expenditures
FY 1987 through FY 1992
(thousands of dollars)

	FY 1987	FY 1988	FY 1989
Beginning Balance	$0.0	$15,198.9	$9,714.9
Revenues:			
Harbor Maintenance Fee	53,000.0	144,001.0	166,000.0
Toll Receipts	4,643.0	10,447.5	9,806.4
Interest	553.7	6,528.2	7,342.8
Net Available:	58,196.7	160,976.7	183,149.2

	FY 1990	FY 1991	FY 1992
Beginning Balance	$12,311.5	$30,253.6	$72,793.9
Revenues:			
Harbor Maintenance Fee	180,493.0	374,420.0	505,827.0
Toll Receipts	8,849.3	9,266.6	8,733.0
Interest	8,280.6	11,814.3	16,519.9
Net Available	197,622.9	395,500.9	531,079.9

	FY 1987	FY 1988	FY 1989
Expenditures:			
Corps of Engineers	35,000.0	148,000.0	159,026.0
St. Lawrence Seaway	4,000.0	9,424.0	10,382.0
SLS Toll Rebates	3,997.8	8,894.5	10,977.3

	FY 1990	FY 1991	FY 1992
	159,073.7	333,401.5	462,229.2
	11,397.0	9,075.0	10,949.9
	9,041.5	10,297.8	9,579.0
Dept. of Transportation	0.0	0.0	0.0
Administration Costs	0.0	142.1	167.3
Net Expenditures:	42,997.8	166,460.7	180,552.6

	FY 1987	FY 1988	FY 1989
	0.0	0.0	16.0
	168.6	186.3	170.0
	179,680.8	352,960.6	482,944.1
Ending Balance:	$15,198.9	$9,714.9	$12,311.5
	FY 1990	FY 1991	FY 1992
	$30,253.6	$72,793.9	$120,929.7

Source. Funds Accounting Branch, Financial Management Services, Department of Treasury

* Payment of rent for the St. Lawrence Seaway Development Corporation as authorized by Title 1, Public Law 102-143.

14. Challenge by European Community (EC) Members of the General Agreement on Tariff and Trade (GATT). It is worth noting that on March 20, 1992, the Office of the Assistant Secretary of the Army (Civil Works) received a letter from the Office of the United States Trade Representative in Geneva, Switzerland, stating that the EC members of GATT had requested a formal "consultation" concerning the appropriateness of the Harbor Maintenance Fee within the context of GATT. Issues included the *ad valorem* nature of the fee, the nature of the expenditures made on behalf of commercial navigation, and verification that the domestic sector of the U. S. economy also was paying the fee. Of special concern was the growing surplus of the Harbor Maintenance Trust Fund. The Assistant Secretary

of the Army (Civil Works) sent a representative to Geneva who, with a legal advisor from the Office of the U. S. Trade Representative, addressed these issues with the EC members of GATT. Additional consultations have not been requested to date. It was clear, however, that the European Community has been monitoring carefully the Harbor Maintenance Fee and Trust Fund and is ready to file a formal complaint if the administration of the Trust Fund should deviate outside the parameters of the General Agreement on Tariff and Trade.

15. Harbor Maintenance Trust Fund Balances. The balance remaining in the Harbor Maintenance Trust Fund as of September 30, 1992, was $120,929,792.23. This "surplus" continues to be of concern and is primarily the result of the inability to obtain authorizing legislation to allow the National Oceanic and Atmospheric Administration to receive approximately $45.5 million per year from the Trust Fund. Also of concern is the absence of legislative authority to withdraw $5 million per year from the Trust Fund for the administrative expenses of U. S. Customs Service, Census Bureau, and the Army Corps of Engineers. This $50.5 million is included in the current 0.125 percent fee rate. Had these monies been withdrawn in 1991 and in 1992, the surplus in the Trust Fund would be less than $20 million.

16. Harbor Maintenance Trust Fund Projections. The following table displays anticipated deposits, withdrawals, and Trust Fund balances through FY 1997. The projections assume that legislation to withdraw annually from the Harbor Maintenance Trust Fund the $5 million for administering the Fee and Trust Fund, and approximately $45.5 million for

NOAA will be approved for implementation on October 1, 1994. If this does not occur, annual Trust Fund receipts are likely to be $15-70 million less than projected and withdrawals approximately $45.5 million less. If the NOAA legislation is not approved, and these monies remain in the Harbor Maintenance Trust Fund, the ending balance surplus will grow to what may be considered unacceptable levels. Whereas a surplus of $100-200 million should be recognized as a prudent reserve for contingencies, amounts in excess of this are likely to be challenged by the European Community members of GATT.

Harbor Maintenance Trust Fund
Projected Revenues and Expenditures
FY 1992 through FY 1997
(thousands of dollars)

	FY 1992*	FY 1993*	FY 1994
Beginning Balance	$72,793.9	$120,929.7	$188,751
Revenues:			
Harbor Maintenance Fee	505,827.0	554,000	570,620
Toll Receipts	8,733.0	10,200	10,500
Interest	16,519.9	18,308	22,913
Net Available	531,079.9	582,508	604,033

	FY 1995	FY 1996	FY 1997
Beginning Balance	$220,037	$260,783	$305,874
Harbor Maintenance Fee	599,151	623,117	635,579
Toll Receipts	10,600	10,700	10,800
Interest	25,358	28,278	31,228
Net Available:	635,109	662,095	677,607

	FY 1992*	FY 1993*	FY 1994
Expenditures:			
Corps of Engineers	462,229.2	493,452	500,000
St. Lawrence Seaway	10,949.9	10,825	11,355
SLS Toll Rebates	9,579.0	10,250	10,727
Dept. of Transportation	16.0	160	165

	FY 1995	FY 1996	FY 1997
Corps of Engineers	521,000	543,000	564,000
St. Lawrence Seaway	11,853	12,383	12,938
SLS Toll Rebates	10,840	10,946	11,057
Dept. of Transportation	170	175	175

	FY 1992*	FY 1993*	FY 1994
Admin. Costs (Proposed Legislation)	170.0	0	5,000
NOAA (Proposed Legislation)	0.0	0	45,500
Net Expenditures:	482,944.1	514,687	572,747
Ending Balance:	$120,929.7	$188,751	$220,037

	FY 1995	FY 1996	FY 1997
Admin. Costs (Proposed Legislation)	5,000	5,000	5,000
NOAA (Proposed Legislation)	45,500	45,500	45,500
Net Expenditures:	594,363	617,004	638,670
Ending Balance:	$260,783	$305,874	$344,811

* FY 1992 figures are actual revenues and appropriations as reported by Department of Treasury.

** FY 1993 Harbor Maintenance Fee revenue includes reconciliation of $28.2 million for underestimating of revenue in 1992.

17. Conclusions. The Harbor Maintenance Trust Fund is meeting its objective of financing 100 percent of the eligible operations and maintenance expenditures made on behalf of commercial navigation for the St. Lawrence Seaway Development Corporation and the Army Corps of Engineers. The collections and Trust Fund

balances are well within expected parameters established at the time of enactment. There is evidence that improvements in collections can be made, particularly in the domestic sector and, to a lesser extent, from exporters. The Department of Treasury, and in particular the U. S. Customs Service, has done an excellent job of collecting and administering the program under the current funding limitations. Full funding of the $5 million is needed, however, for appropriate administra tion and equitable enforcement of this important program.

SECOND ANNUAL REPORT TO CONGRESS

ON THE

STATUS OF THE HARBOR MAINTENANCE TRUST FUND

FOR

FISCAL YEAR 1993

SECOND ANNUAL REPORT TO CONGRESS ON THE STATUS OF THE HARBOR MAINTENANCE TRUST FUND FOR FISCAL YEAR 1993

BACKGROUND

1. Introduction. This report is being provided in compliance with Section 330 of the Water Resources Development Act of 1992, Public Law 102-580. This is the Second Annual Report to Congress on the status of the Harbor Maintenance Fee (HMF) and Trust Fund (HMTF). For more background information on the HMF, please refer to the First Annual Report to Congress. That initial report also covered the history of the Harbor Maintenance Fee and Trust Fund since its inception in 1986 through Fiscal Year (FY) 1992.

2. Current Level of Recovery. Section 11214 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-580, increased the Harbor Maintenance Fee to 0.125 percent. This increase went into effect on January 1, 1991. Section 316 of the Water Resources Development Act of 1990, Public Law 101-640, authorized recovery of up to 100 percent of the Army Corps of Engineers eligible Operation and Maintenance (O&M) expenditures made on behalf of commercial navigation. The 0.125 percent *ad valorem* fee also was calculated to be sufficient to reimburse the National Oceanic and Atmospheric Administration (NOAA) on an annual basis approximately $45.5 million (an amount approximating a 0.01 percent *ad*

valorem fee) for its activities pertaining to commercial navigation. Whereas collections have been very near projections, withdrawals have been less than anticipated. The authority to withdraw funds from the HMTF has never been obtained by NOAA, and this revenue has been accumulating in the Trust Fund since January 1, 1991. Additionally, the budget authority of the Corps of Engineers has been much less than anticipated when the 0.125 percent *ad valorem* fee was established. Deposits into the HMTF during FY 1993 totaled $650,722,238.53, of which $13,520,788.24 was interest. Total transfers from the HMTF equaled $468,106,523.56 during FY 1993. This has caused an FY 1993 surplus of $182,615,714.97 and has resulted in an accumulated HMTF surplus of $303,545,507.20 at the beginning of FY 1994. Both revenue and expenditures will be discussed in more detail later in this report.

COSTS ELIGIBLE FOR RECOVERY

3. Defining Expenditures Eligible for Recovery. Section 210 of Public Law 99-662 authorizes appropriations out of the Harbor Maintenance Trust Fund for 100 percent of the "eligible operations and maintenance costs of those portions of the St. Lawrence Seaway operated and maintained by the St. Lawrence Seaway Development Corporation" and "not more than 40 percent" (amended under Section 316 of Public Law 101-640, the Water Resources Development Act of 1990, to 100 percent) "of the eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States." Section 210 of Public Law 99-662 refers to the payment of such sums as may be

necessary to pay for "eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors with the United States." The Corps of Engineers interprets the term "commercial navigation" referenced in Section 210 to mean any project authorized by Congress with "commercial navigation" as an authorized purpose. O&M costs for these projects are accounted by the Corps of Engineers Management Information System (COEMIS). Transfers for current fiscal year expenditures are based on the actual expenditures of the previous fiscal year; that is, FY 1993 withdrawal is equal to FY 1992 actual expenditures.

4. Army Corps of Engineers Expenditures Eligible for Recovery. Many projects with "commercial navigation" as a project purpose have other authorized purposes as well. Such purposes include recreation, hydropower, flood control, water supply, and the like. Typically, deep draft port projects are single purpose (commercial navigation) projects, although a few also are authorized for recreation. All O&M expenditures made on behalf of single-purpose commercial navigation projects were considered subject to recovery. Joint-use costs were allocated to the project's various purposes in proportion to the benefits realized for each purpose. Appendix A displays annual O&M expenditures eligible for reimbursement from the Harbor Maintenance Trust Fund during FY 1993. Appendix A includes two tables which differentiate between deep draft projects (greater than 14 feet) and shallow draft projects (14 feet and less). These are identified by State and by project name. The Army Corps of Engineers transfers during FY 1993, which represent

actual expenditures made during FY 1992 by the Corps, were $446,164,200.

5. Other Expenditures Eligible for HMTF Funding. One hundred percent of the O&M expenditures for the St. Lawrence also are taken from the Harbor Maintenance Trust Fund. During FY 1993, $13,744,000 was transferred to the St. Lawrence Seaway for its use in FY 1993, including $160,000 for St. Lawrence Seaway rent payments transferred to the Department of Transportation. In addition, Seaway tolls for that portion under United States jurisdiction are deposited into the Harbor Maintenance Trust Fund but then rebated fully to vessel operating companies that paid the tolls. During FY 1993, $8,074,344 in Seaway tolls were returned to vessel operating companies. The Department of the Treasury also withdrew $124,000 to cover its cost for administering the Trust Fund.

HARBOR MAINTENANCE FEE REVENUES

6. Collections and Receipts. All commerce subject to the Harbor Maintenance Fee (imports, exports, and domestic) incurs the same 0.125 percent *ad valorem* fee. Imports lead as a source of revenue paid into the Harbor Maintenance Trust Fund, since they lead in the total volume and value of cargo subject to the fee. Generally, imports tend to consist of higher value commodities (e.g., electronics, automobiles, etc.), while U.S. exports and domestic cargo generally are lower value cargo (e.g., grain, coal, paper, etc.). The following table shows revenue paid into the Harbor Maintenance Trust Fund since FY 1988, the first full

year of implementation, based on actual collections through the last day of each fiscal year.

Harbor Maintenance Fee
Collections by Source
FY 1988 through FY 1993
(thousands of dollars)

	FY 1988	FY 1989	FY 1990
Imports	$99,793	$105,927	$109,215
Exports	35,938	44,618	45,808
Foreign Trade Zones	3,102	3,876	4,020
Domestics	9,170	8,590	9,069
Passenger	551	666	559
Net Collections:	$148,554	$163,677	$168,671

	FY 1991	FY 1992	FY 1993
Imports	$258,321	$342,402	$361,678
Exports	93,194	142,916	169,141
Foreign Trade Zones	9,166	16,974	20,959
Domestics	19,518	28,451	31,858
Passenger	1,977	3,275	4,748
Net Collections:	$382,176	$534,018	$588,384

Source: Office of Inspection and Control, U.S. Customs Service, Department of the Treasury
Note: HMF collections in any given year differ from revenues officially deposited into the HMTF due to reporting time and estimating error.

Total revenue collections shown in this table differ from the "official" HMTF deposits shown in paragraph 10 of this report because the Treasury Income Statement of the HMTF, like the Budget of the United States, must rely on revenue estimates prepared weeks or months before the close of the fiscal year. The Department of the Treasury reconciles differences between actual fee receipts as reported by the U.S. Customs Service and its estimates on a monthly basis, as well as at the beginning of each fiscal year. Only the U.S. Customs Service reports actual revenue by source. This information is used to monitor receipts on a regular basis and to estimate compliance.

7. Enforcement, Collections, and Shortfalls. The Harbor Maintenance Fee on imports is collected in conjunction with the U. S. customs fee. The mechanism for administrating, collecting, and enforcing customs fees is well established and well enforced. Shipper Export Declarations (SED's) are routinely reported to the Department of Commerce. The export values reported on the SED's were important only for statistical purposes prior to the implementation of the HMF. Now that Congress has authorized the $5 million per year for administering the HMF, it should be possible to develop a procedure for better ensuring the accuracy of the fees paid on exports. Domestic shippers have had even less experience. Domestic vessel operators routinely report tonnage movements to the Army Corps of Engineers Waterborne Commerce Statistical Center; however, the value of this cargo is not available to the vessel operating companies, and the tonnage data have been used for statistical purposes only. Reporting is good, but essentially

voluntary. Based on the type and volume of commerce, compared with revenue paid, there appears to be significant shortfalls from domestic shippers.

The Bureau of Census value of imports between FY 1992 ($310.3 billion) and FY 1993 ($331.7 billion) increased by 6.8 percent—very close to the 6.4 percent HMF revenue increase from imports plus foreign trade zones. Reported FY 1993 value of exports actually dropped from $185.2 billion in FY 1992 to $176.6 billion in FY 1993, while HMF revenue from exports increased by 18.3 percent. Even though the reporting periods are different (calendar year versus fiscal year), this still implies a significant improvement in compliance. Whereas there are no comparable statistics on value of domestic waterborne commerce, HMF receipts increased by 12.0 percent between FY 1992 and FY 1993—a greater increase than expected. Revenue from passenger vessels, a category which has demonstrated significant resistance to HMF collections, also increased. Even though there is evidence of improvement in compliance, we believe that collections can increase in these categories by about $50 million per year with better administration and enforcement. HMF projections assume a $15 million increase in revenue due to improved administration in FY 1996, $30 million in FY 1997, and $50 million per year in FY 1998 and thereafter.

8. Funding for Administrative Costs. Section 1403 of Public Law 99-662 created the Harbor Maintenance Trust Fund (by amending subchapter A of Chapter 98 of the Internal Revenue Code of 1954). This section also authorized the Department of the Treasury to obtain, annually, up to $5 million to administer the Harbor Maintenance Fee and Trust Fund. This

money was to be appropriated from the Merchandise Processing Fee authorized under the Consolidated Omnibus Budget Reconciliation Act of 1985. However, a 1987 report issued by a panel convened under the General Agreement on Tariff and Trade (GATT) found that, to be consistent with the GATT, expenditures of funds collected under the U. S. Merchandise Processing Fee must be for services related to the process of customs entry of the merchandise. This effectively nullified Treasury's ability to use its existing authority to obtain the needed $5 million for administering the HMF and HMTF. After several attempts, Congress rectified this problem in December 1993, with the passage of Section 683 of Public Law 103-182, the North American Free Trade Agreement Implementation Act. This authorizes up to $5 million to be appropriated from the Harbor Maintenance Trust Fund annually for the administrative costs of the Department of the Treasury, the Army Corps of Engineers, and the Department of Commerce. Plans are underway to seek appropriations in FY 1996. It is anticipated that each agency will budget for its respective share of the $5 million, of which Customs would receive the majority of the funding for audits and enforcement. Over the next three years, this is expected to further increase collections, correct the suspected deficiencies in collections which currently exist, and bring collections to near full compliance by the end of FY 1998.

HARBOR MAINTENANCE TRUST FUND

9. Harbor Maintenance Trust Fund Revenue and Transfers. The following table summarizes the revenues received into the Harbor Maintenance Trust Fund and transfers from the Trust Fund for the last six years. The table is prepared from data provided by the Funds Accounting Branch, Financial Management Services, of the Department of the Treasury. Revenues shown in this table will not agree with actual collections reported by the U.S. Customs Service because of the time it takes for Treasury to account for revenue transfers from the U.S. Customs Service. Reconciliation between actual collections by Customs and revenue estimates made by Treasury are made each month; however, end of year differences are inevitable. The Financial Management Services, Department of the Treasury, is the official source of Trust Fund balances and disbursements and is the only source of obtaining interest income attributed to the HMTF. The following table represents the official status of the HMTF.

Harbor Maintenance Trust Fund
Revenues and Transfers
FY 1988 through FY 1993
(thousands of dollars)

	FY 1988	FY 1989	FY 1990
Beginning Balance:	$15,198.9	$9,714.9	$12,311.5
Revenues:			
Harbor Maintenance Fee	144,001.0	166,000.0	180,493.0
Toll Receipts	10,447.5	9,806.4	8,849.3
Interest	6.528.2	7,342.8	8,280.6
Net Revenues:	160,976.7	183,149.2	197,622.9
Net Available:	176,175.6	192,864.1	209,934.4

	FY 1991	FY 1992	FY 1993
Beginning Balance:	$30,253.6	$72,793.9	$120,930
Revenues:			
Harbor Maintenance Fee	374,420.0	505,827.0	628,462
Toll Receipts	9,266.6	8,733.0	8,739
Interest	11,814.3	16,519.9	13,521
Net Revenues:	395,500.9	531,079.9	650,722
Net Available:	425,754.5	603,873.8	771,652

	FY 1988	FY 1989	FY 1990
Transfers:			
Corps of Engineers	148,000.0	159,026.0	159,073.7
St. Lawrence Seaway	9,424.0	10,382.0	11,397.0
SLS Toll Rebates	8,894.5	10,977.3	9,041.5
Dept. of Transportation*	0.0	0.0	0.0
Administration Costs	142.1	167.3	168.6
Net Expenditures:	166,460.7	180,552.6	179,680.8
Surplus/(Deficit):	$9,714.9	$12,311.5	$30,253.6

	FY 1991	FY 1992	FY 1993
Corps of Engineers	333,401.5	462,229.2	446,164
St. Lawrence Seaway	9,075.0	10,949.9	13,584
SLS Toll Rebates	10,297.8	9,565.0	8,074
Dept. of Transportation*	0.0	16.0	160
Administration Costs	186.3	184.0	124
Net Expenditures:	352,960.6	482,944.1	468,106
Surplus/(Deficit):	$72,793.9	$120,929.7	$303,546

Source: Funds Accounting Branch, Financial Management Services, Department of the Treasury

* Payment of rent for the St. Lawrence Seaway Development Corporation as authorized by Title 1, Public Law 102-143.

10. Harbor Maintenance Trust Fund Balances. According to the Income Statement of the Financial Management Services Division of the Department of the Treasury, the FY 1993 surplus was $182,615,714.97. This "surplus" continues to be of concern and is in part the result of the absence to date of authorizing legislation to allow the National Oceanic and Atmospheric Administration to receive approximately $45.5 million per year from the Trust Fund. A second contributing factor is that the O&M budget of the Army Corps of Engineers to date has been less than had been projected in 1990 when the new *ad valorem* rate of 0.125 percent was established. HMF collections have been only slightly less than projected at that time. This has resulted in a grow-

ing surplus in the HMTF account. Although on December 8, 1993, Section 683 of Public Law 103-182 was signed into law, authorizing the withdrawal of the $5 million per year from the Trust Fund to improve the administration of the Fund and for enforcement purposes, no funds have been appropriated to date. While better administration and enforcement would tend to add to the HMTF surplus by increasing collections, the Administration supports appropriating these funds.

11. Harbor Maintenance Trust Fund Projections. The following table displays anticipated deposits, withdrawals, and Trust Fund balances through FY 1998. The projections assume appropriations of $5 million for administering the HMF and HMTF will be forthcoming in FY 1996. If this does not occur, annual Trust Fund receipts are likely to be reduced by $15 million to $50 million as described earlier. The projections also assume that Congress will pass legislation for FY 1995 to enable NOAA to receive funding for its commercial navigation activities from the HMTF.

Harbor Maintenance Trust Fund
Projected Revenues and Transfers
FY 1993 through FY 1998
(thousands of dollars)

	FY 1993	FY 1994	FY 1995
Beginning Balance:	$120,930	$303,546	$453,137
Revenues:			
Harbor Maintenance Fee	628,462	615,000	630,400
Toll Receipts	8,739	9,480	9,570
Interest	13,521	22,913	25,359
Net Revenues:	650,722	647,393	665,329
Net Available:	771,652	950,939	1,118,466

	FY 1996	FY 1997	FY 1998
Beginning Balance:	$590,389	$689,849	$809,204
Revenues:			
Harbor Maintenance Fee	661,200	692,355	728,914
Toll Receipts	9,670	9,770	9,870
Interest	28,278	31,228	52,852
Net Revenues:	699,148	733,353	791,636
Net Available:	1,289,537	1,423,202	1,600,840

	FY 1993	FY 1994	FY 1995
Transfers:			
Corps of Engineers	446,164	476,890	462,000
St. Lawrence Seaway	13,584	10,915	10,963
SLS Toll Rebates	8,074	9,707	9,319
Dept. of Transportation	160	165	170
Admin. (Treasury; Corps; Commerce)	124	125	125
NOAA (Proposed Legislation)	0	0	45,500
Net Transfers:	468,106	497,802	528,077
Surplus/(Deficit):	$303,546	$453,137	$590,389

	FY 1996	FY 1997	FY 1998
Transfers:			
Corps of Engineers	528,000	542,000	554,000
St. Lawrence Seaway	11,177	11,382	11,253
SLS Toll Rebates	9,836	9,941	10,047
Dept. of Transportation	175	175	175
Admin. (Treasury; Corps; Commerce)	5,000	5,000	5,000
NOAA (Proposed Legislation)	45,500	45,500	45,500
Net Transfers:	599,688	613,998	625,975
Surplus/(Deficit):	$689,849	$809,204	$974,865

* FY 1993 figures are those reported by Financial Management Services, Department of the Treasury; FY 1994 and beyond are budget data from the respective agencies cited.

12. Challenge by the European Community Members of the General Agreement on Tariff and Trade (GATT). In 1992, the European Community (EC) members of GATT requested a formal "consultation" concerning the appropriateness of the Harbor Maintenance Fee within the context of GATT. Issues included the *ad valorem* nature of the fee, the nature of the expenditures made on behalf of commercial navigation, and verification that the domestic sector of the U.S. economy also was paying the fee. Of special concern was the growing surplus of the Harbor Maintenance Trust Fund. The Assistant Secretary of the Army (Civil Works) sent a representative to Geneva who, with a legal advisor from the Office of the U.S. Trade Representative, addressed these issues with the EC members of GATT. Additional consultations have not been requested to date. It was clear, however, that the EC has been monitoring carefully the Harbor Maintenance Fee and Trust Fund and is ready to file a formal complaint if the administration of the Trust Fund should deviate outside the parameters of the General Agreement on Tariff and Trade. If the surplus continues to grow, it will become more likely that the European Community will again challenge the Harbor Maintenance Fee under the General Agreement on Tariff and Trade.

13. Conclusions. The Harbor Maintenance Trust Fund is meeting its objective of financing 100 percent of the eligible O&M expenditures made on behalf of commercial navigation for the St. Lawrence Seaway Development Corporation and the Army Corps of En-

gineers. There is evidence that improvements in collections can be made, particularly in the domestic sector and, to a lesser extent, from exporters. Full funding of the $5 million is needed to improve both the domestic and international credibility of the Trust Fund. Passage of enabling legislation for NOAA would reduce the projected surplus in the HMTF in a manner consistent with the objectives for which the Fund was first created.

BRIEFING BOOK AND FACT SHEETS

on the

HARBOR MAINTENANCE FEE AND TRUST FUND
(Title XIV, PL 99-662)

for

U.S. Army Corps of Engineers
20 Massachusetts Av. N.W.
Washington, D.C. 20314
(202) 504-4312

14 February 1990

Harbor Maintenance Trust Fund

ISSUE:

Request was made on 2 Feb 90 for information as to how much Operation and Maintenance (O&M) expenditures are eligible for recovery from the Harbor Maintenance Trust Fund; how much other harbor work is funded out of the trust fund; and how much O&M is not subject to recovery from the trust fund. The following Fact Sheet describes how eligible O&M is defined, and how amounts subject to recovery are calculated and transferred to the Corps of Engineers.

CURRENT AUTHORIZATION:

The Harbor Maintenance Trust Fund was authorized under Title 14 of the Water Resources Development Act of 1986, (Public Law 99-662). Section 210, "Authorization of Appropriations," of that Act reads as follows:

(a) Trust Fund—There are authorized to be appropriated out of the Harbor Maintenance Trust Fund, established by section 9505 of the Internal Revenue Code of 1954, for each fiscal year such sums as may be necessary to pay—

(1) 100 percent of the eligible operations and maintenance costs of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation for such fiscal year; and

(2) not more than 40 percent of the eligible operation and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States.

HOW THE TRUST FUND WORKS:

The Corps of Engineers does not receive money from the Harbor Maintenance Trust Fund to finance the operation and maintenance of an individual port. There is also no relationship between the amount of money spent on a port's maintenance, and the amount of revenue collected from cargo moving in or out of that particular port. The Corps of Engineers appropriation process is the same as it has always been; funds are requested from Congress based upon the anticipated maintenance needs of the nation's ports. About two weeks before the close of the fiscal year, the Trust Fund revenue is compared to the previous year's eligible expenditures. These expenditures are certified by the Corps, and the Department of Treasury transfers the appropriate amount from the Harbor Maintenance Trust Fund to the General Treasury. If eligible expenditures exceed the balance in the Trust Fund, the entire amount is transferred to the General Treasury. If receipts exceed expenditures, the balance remains in the Trust Fund.

DEFINING NAVIGATION COSTS SUBJECT TO RECOVERY:

At the time the Harbor Maintenance Fee (HMF) legislation was being formulated, a Navigation Cost Data Base was developed for this purpose. Projects included in the data base were those which have had construction, operation, or maintenance expenditures made on their behalf since 1977. Recorded were the navigation O&M cost or expenditure. Navigation O&M cost was defined as an O&M expenditure made on a project authorized for commercial navigation.

This included multi-purpose as well as single-purpose navigation projects. After the Water Resources Development Act of 1986 (PL 99-662) was passed, a listing of these projects was provided the Assistant Commissioner of the U.S. Customs Service in a letter, enclosed, dated 13 Feb 87. This correspondence is at TAB D

COSTS BY CATEGORY AND PROJECT:

For a given year, the above projects are divided into three categories. The first is shallow draft projects subject to the Inland Waterway Fuel Tax; cargo utilizing these inland projects is not subject to the Harbor Maintenance Fee. A second category is the deep-draft projects which service harbors subject to the Harbor Maintenance Fee. The third and final category is the remaining shallow-draft inland projects not subject to the fuel tax. These are identified in the enclosed tables as Tables 11-S, 1-D, and 21-S, respectively at TAB E.

UNITED STATES GENERAL ACCOUNTING OFFICE

GAO

Report to the Honorable
Mark O. Hatfield, U.S. Senate

December 1991

U.S. CUSTOMS SERVICE

Limitations in Collecting Harbor Maintenance Fees

[Seal Omitted]

GAO/GGD-92-25

GAO United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-245948

December 23, 1991

The Honorable Mark O. Hatfield
United States Senate

Dear Senator Hatfield:

In response to your request, we reviewed the U.S. Customs Service's efforts to collect the fee for use of harbors and ports—the harbor maintenance fee (HMF). Cargo importers, exporters, domestic shippers of cargo between ports in the United States, foreign trade zone (FTZ) users,[1] and passenger vessel operators are to pay the HMF on the basis of the value (ad valorem) of cargo and passenger fares. Collections from the fee are primarily used to pay the U.S. Army Corps of Engineers' costs for improving and maintaining ports and harbors. You believed that importers may be correctly paying the fee but expressed concerns that the other parties were not.

[1] Foreign or "free" trade zones are secured areas within the United States that have been established to encourage U.S. participation in international trade.

You also believed that such an inequity would raise questions about the consistency of compliance and the adequacy of HMF collections. We agreed with your office to (1) obtain information on collections and (2) review Customs' internal controls over collections.

To address these issues, we reviewed documents and procedures, interviewed officials, and observed the processes that were used in collecting the HMF. However, we did not test the controls of collecting the HMF. Our work was done from February 1991 through September 1991 using generally accepted government auditing standards. a detailed discussion of our objectives, scope, and methodology is presented in appendix I.

Results in Brief

From Apr. 1, 1987, when collections began, through September 30, 1991, Customs reported HMF collections of just over $916 million. Imports accounted for about 67 percent of this amount ($616 million).

Customs has more controls over HMF collections from importers than it does over payments from exporters, domestic shippers, FTZ users, and passenger vessel operators. Collecting the HMF on imports was incorporated into Customs' existing import process, which also collects import duties and other fees. Customs' import

process has controls to track imported goods from the time they come into the country so it can identify whether import duties have been paid. Importers paid Customs over

* * * * *

When a cargo-carrying ship enters the United States, the carrier is to report its arrival to Customs and submit a report, called a manifest, listing the cargo aboard the vessel. This cargo information serves as an inventory record. If the quantity of goods reported by the carrier on the manifest differs from the quantity reported by the importer or its representative (broker) on the documents filed with Customs for collection purposes, the system is to produce a discrepancy report for reconciliation.

After the importer or broker submits documentation on the cargo and Customs allows the cargo to leave the port for use in the United States, the system is to establish payment dates, giving the importer or broker 10 days from the date that the cargo leaves the port to pay the duties and fees, including the HMF. HMF payments, along with import duties, are to be made to cashiers located at port facilities. If payments are not received by the payment dates, the system is to generate late reports for follow-up. Once collections are received at the port

facilities, they are to be deposited to the United States Treasury.

At the same time importers or brokers submit payments, they are also required to submit documents describing the shipment, declaring its value, and showing how duties and fees were calculated on individual shipments. The information is to be subjected to automated system edits to detect possible problems such as valuation problems that could affect the amount of HMF owed. Customs' import specialists, who are knowledgeable of specific commodity groups and merchandise values, are to further review shipment information selected by the system for accuracy.

The controls available for imports were designed to enable Customs to (1) track cargo to ensure that payments are received and (2) assess the reasonableness of the cargo values. According to Customs officials, because resources are primarily devoted to the import process, Customs chose to adopt different controls over other HMF payments.

Controls Over HMF Payments From Exporters and Domestic Shippers Are Not Being FullyUsed

Customs receives HMF payments from exporters and domestic shippers quarterly. These parties are to complete each quarter an HMF payment form summarizing the value of their shipments. The parties calculate the HMF due on the value they claimed and submit the HMF form along with payments to a lockbox. The lockbox is a postal rental box serviced by a commercial bank that processes HMF payments and deposits them to the United States Treasury. During fiscal year 1991, HMF payments from

* * * * *

HIGHLY QUALIFIED DATA
NOT FOR PUBLICATION OR DISTRIBUTION

1992*
Estimated Receipts**
Harbor Maintenance Fee
from
Cargo Transiting Major Ports

Rank	Port Name	Value of Exports & Imports	HMF	FY-92 O&M Expenditure
1	Los Angeles ***	$62,969,000,000	$78,711,000	$ 162,000
2	NY/NJ	53,072,000,000	68,840,000	18,313,500
3	Long Beach ***	50,428,000,000	63,035,000	(see Los Angeles)
4	Seattle	26,879,000,000	33,598,750	6,659,300
5	Houston	25,020,000,000	31,275,000	2,582,000
6	Oakland	24,124,000,000	30,155,500	1,420,700
7	Tacoma	22,950,000,000	28,687,500	135,500
8	Hampton Roads	19,481,000,000	24,351,250	5,434,300
9	Baltimore	16,862,000,000	21,077,500	16,687,900
10	Portland, Oregon	15,407,000,000	19,258,750	18,650,000

* Value of cargo and revenue estimates are by calendar year; expenditures are by Fiscal Year. Value of Cargo data is from Bureau of Census.

** Revenue estimates are very approximate; may include exempt cargo; does not include domestic cargo subject to fee;

*** Expenditures shown are for Los Angeles and Long Beach combined

11	Charleston	14,320,000,000	17,900,000	6,476,300
12	Miami	13,888,000,000	17,360,000	683,900
13	New Orleans	12,698,000,000	15,872,500	11,720,500
14	Savannah	11,452,000,000	14,315,000	4,679,900
15	S. Louisiana****	11,205,000,000	14,006,.250	36,816,900
16	Jacksonville	8,850,000,000	11,062,500	290,800
17	Philadelphia	6,626,000,000	8,282,500	15,521,900
18	Port Everglades	5,104,000,000	6,380,000	0
19	Port Huron	5,089,000,000	6,361,250	1,059,600
20	San Francisco	4,395,000,000	5,493,750	4,343,900

**** Expenditures shown are for "Mississippi River, Baton Rouge to the Gulf"

Notice: Corps of Engineers cost accounts are maintained under the authorizing project name only. Some projects service more than one port (e.g. "Mississippi River, Baton Rogue to the Gulf". Expenditures are not allocated among these ports, but rather are shown under the predominant port name, (e.g. Baton Rouge)

HIGHLY QUALIFIED DATA. NOT FOR PUBLICATION OR DISTRIBUTION

[0996-A Y1.1/F:104-004]
104th Congress 1st Session _____ H.Doc. 104-004

APPENDIX

[Seal Omitted]

BUDGET OF THE UNITED STATES GOVERNMENT

Fiscal Year 1996

Intragovernmental funds—Continued

RIVERS AND HARBORS CONTRIBUTED FUNDS—Continued

Personnel Summary

Identification code 96-8862-0-7-301	1994 actual	1995 est.	1996 est.
1001 Total compensable workyears: Full-time equivalent employment	926	915	909

HARBOR MAINTENANCE TRUST FUND

Unavailable Collections (in thousands of dollars)

Identification code 96-8863-0-7-301	1994 actual	1995 est.	1996 est.
Balance, start of year:			
01.99 Balance, start of year	302,300	451,384	644,270
Receipts:			
02.01 User fees	622,253	634,700	679,100
02.02 Earnings on investments	12,826	30,596	38,447
02.03 Transfer of tolls from the Saint Lawrence Seaway Development Corporation	11,112		
02.99 Total receipts	646,191	665,296	717,547
04.00 Total: Balances and collections	948,491	1,116,680	1,361,817
Appropriation:			
05.01 Saint Lawrence Seaway Development Corporation, operations and maintenance	-10,765	-10,229	-10,243
05.02 Saint Lawrence Seaway Development Corporation, rental payments	-175	-181	-169
05.03 Army Corps of Engineers, operation and maintenance of commercial navigation harbors and administrative costs	-476,620	-462,000	-500,000
05.04 Saint Lawrence Seaway toll rebate program	-9,547		
05.05 National Oceanic and Atmospheric Administration, commercial navigation and related activities (proposed legislation)			-45,500
05.06 Department of the Treasury, Customs Service: administrative expenses			-3,000
05.99 Subtotal appropriation	-497,107	-472,410	-558,912
07.99 Total balance, end of year	451,384	644,270	802,905

Program and Financing (in thousands of dollars)

Identification code 96-8863-0-7-301	1994 actual	1995 est.	1996 est.
Program by activities:			
10.00 Total obligations (object class 25.2)	476,620	462,000	500,000
Financing:			
39.00 Budget authority	476,620	462,000	500,000
Budget authority:			
Appropriation (trust fund, definite):			
40.26 Appropriation (trust fund, definite)	476,620	462,000	499,000
40.26 Appropriation (trust fund, definite)			1,000
43.00 Appropriation (total)	476,620	462,000	500,000
Relation of obligations to outlays:			
71.00 Total obligations	476,620	462,000	500,000
80.00 Outlays	476,620	462,000	500,000

The Harbor Maintenance Trust Fund is established in accordance with the Harbor Maintenance Revenue Act of 1986 (Public Law 99–662, Title XIV, as amended). Under law, revenue is derived from receipts from a 0.125 percent *ad valorem* user fee imposed on commercial cargo loaded and unloaded at specified U.S. ports open to public navigation.

The Harbor Maintenance Revenue Act also authorized expenditures from the Trust Fund to finance up to 100 percent of Corps of Engineers' harbor operation and maintenance (O&M) costs, including O&M costs associated with Great Lakes navigational projects, and fully finance the operation and maintenance of the Saint Lawrence Seaway Development Corporation.

The North American Free Trade Agreement Implementation Act, Sec. 683 (Public Law 103–182), authorized payment of administrative expenses incurred by the Department of the Treasury, the Army Corps of Engineers, and the Department of Commerce related to administration of the harbor maintenance fee, but not to exceed $5,000,000 for any fiscal year. The Corps of Engineers has budgeted $1,000,000 for anticipated expenses associated with administration of the harbor maintenance fee.

Legislation will be proposed by the National Oceanic and Atmospheric Administration (NOAA) to fund programs that benefit the commercial navigation industry.

For appropriation language, see the following accounts: Army Corps of Engineers, Civil "Operation and Maintenance, General"; St. Lawrence Seaway Development Corporation "Operations and Maintenance"; Department of Transportation "Rental Payments" and Department of the Treasury "Administration of Harbor Maintenance Trust Fund".

COASTAL WETLANDS RESTORATION CONSOLIDATED PROGRAM

(Budget authority in thousands of dollars)

	1994 actual	1995 est.	1996 est.
Coastal Wetlands Restoration Trust	34,939	34,958	36,981
Rivers and harbors contributed funds (permanent appropriation)	0	10,173	10,576
Total appropriation	34,939	45,131	47,557

COASTAL WETLANDS RESTORATION TRUST FUND

Program and Financing (in thousands of dollars)

Identification code 96-8333-0-7-301	1994 actual	1995 est.	1996 est.
Program by activities:			
10.00 Total obligations	17,749	22,605	23,000
Financing:			
21.40 Unobligated balance available, start of year: Treasury balance	-51,452	-68,642	-80,595
24.40 Unobligated balance available, end of year: Treasury balance	68,642	80,595	94,976
62.00 Budget authority (transferred from other accounts)	34,939	34,958	36,981
Relation of obligations to outlays:			
71.00 Total obligations	17,749	22,605	23,000
72.40 Obligated balance, start of year: Unpaid obligations: Treasury balance	4,823	13,042	10,000
74.40 Obligated balance, end of year: Unpaid obligations: Treasury balance	-13,042	-10,000	-11,000
90.00 Outlays	9,530	25,647	22,000

In 1990, the Coastal Wetlands Planning, Protection and Restoration Act (Public Law 101–646) authorized transfer of 18 percent of each annual appropriation from the Sport Fish Restoration Account for coastal wetlands activities; 70 percent of this amount is allocated to the Corps of Engineers for use by the Louisiana Coastal Wetlands Conservation and Restoration Task Force, chaired by the Secretary of the Army, to provide for the long-term conservation, protection, and restoration of coastal wetlands in the State of Louisiana. The Coastal Wetlands Restoration Trust Fund is established to receive these funds and finance the appropriate activities.

Object Classification (in thousands of dollars)

Identification code 96-8333-0-7-301	1994 actual	1995 est.	1996 est.
Personnel compensation:			
11.1 Full-time permanent	1,454	1,686	1,415
11.3 Other than full-time permanent		104	87
11.5 Other personnel compensation		67	57
11.9 Total personnel compensation	1,454	1,857	1,559

Other	258	258	258
Conviction rate (percent)	55%	55%	55%
Average sentence (years)	NA	NA	NA
Recoveries dollars saved	NA	NA	NA

Object Classification (in thousands of dollars)

Identification code 20-1000-0-1-751	1994 actual	1995 est.	1996 est.
Direct obligations:			
Personnel compensation:			
11.1 Full-time permanent	184,586	187,552	191,580
11.3 Other than full-time permanent	588	1,586	1,612
11.5 Other personnel compensation	27,072	29,129	28,405
11.9 Total personnel compensation	212,596	218,277	221,597
12.1 Civilian personnel benefits	65,065	65,418	68,252
13.0 Benefits for former personnel	109	115	115
21.0 Travel and transportation of persons	9,302	10,028	9,833
22.0 Transportation of things	1,223	1,133	1,094
23.1 Rental payments to GSA	34,021	35,354	36,399
23.3 Communications, utilities, and miscellaneous charges	14,586	13,514	13,064
24.0 Printing and reproduction	1,710	1,388	1,382
25.2 Other services	25,759	28,529	29,241
26.0 Supplies and materials	6,324	6,924	6,381
31.0 Equipment	3,267	7,678	12,718
42.0 Insurance claims and indemnities	516	319	329
99.0 Subtotal, direct obligations	375,209	388,668	400,805
99.0 Reimbursable obligations	24,111	15,044	10,471
99.9 Total obligations	399,400	401,702	411,356

Personnel Summary

Identification code 20-1000-0-1-751	1994 actual	1995 est.	1996 est.
Direct:			
Total compensable workyears:			
1001 Full-time equivalent employment	4,128	4,074	4,056
1005 Full-time equivalent of overtime and holiday hours	41	41	41
Reimbursable:			
Total compensable workyears:			
2001 Full-time equivalent employment	130	136	112
2005 Full-time equivalent of overtime and holiday hours	1	1	1

Internal Revenue Collections for Puerto Rico

Program and Financing (in thousands of dollars)

Identification code 20-5737-0-2-806	1994 actual	1995 est.	1996 est.
Program by activities:			
10.00 Total obligations (object class 41.0)	200,670	225,677	232,447
Financing:			
60.25 Budget authority (appropriation) (special fund, indefinite)	200,670	225,677	232,447
Relation of obligations to outlays:			
71.00 Total obligations	200,670	225,677	232,447
90.00 Outlays	200,670	225,677	232,447

Excise taxes collected under the Internal Revenue laws of the United States on articles produced in Puerto Rico and either transported to the United States or consumed on the island are paid to Puerto Rico (26 U.S.C. 7652).

UNITED STATES CUSTOMS SERVICE

Federal Funds

General and special funds:

Salaries and Expenses

For necessary expenses of the United States Customs Service, including purchase of up to 1,000 motor vehicles of which 960 are for replacement only, including 990 for police-type use and commercial operations; hire of motor vehicles; not to exceed $20,000 for official reception and representation expenses; and awards of compensation to informers, as authorized by any Act enforced by the United States Customs Service; [$1,394,783,000] *$1,381,550,000*, of which such sums as become available in the Customs User Fee Account, except sums subject to section 13031(f)(3) of the Consolidated Omnibus Reconciliation Act of 1985, as amended (19 U.S.C. 58c(f)(3)), shall be derived from that Account; of the total, not to exceed $150,000 shall be available for payment for rental space in connection with preclearance operations, and not to exceed $4,000,000 shall be available until expended for research: *Provided*, That uniforms may be purchased without regard to the general purchase price limitation for the current fiscal year[: *Provided further*, That $750,000 shall be available for additional part-time and temporary positions in the Honolulu Customs District: *Provided further*, That $10,000,000 shall be available for the Center for Study of Western Hemispheric Trade as authorized by Public Law 103–182: *Provided further*, That of the offsetting collections credited to this account, $410,000 are permanently canceled: *Provided further*, That Customs shall achieve a minimum full-time equivalent staffing level of 17,524 during fiscal year 1995: *Provided further*, That $800,000 shall remain available until expended for the construction of a replacement fence within the city limits of Nogales, Arizona under the authority of section 69, title 19, United States Code]. *(Treasury Department Appropriations Act, 1995.)*

Program and Financing (in thousands of dollars)

Identification code 20-0802-0-1-751	1994 actual	1995 est.	1996 est.
Program by activities:			
Direct program:			
00.01 Inspection and control	752,851	809,125	832,520
00.02 Enforcement	479,308	434,353	448,588
00.03 Tariff and trade	314,192	312,975	383,429
00.91 Total direct program	1,548,211	1,556,453	1,644,555
01.01 Reimbursable program	253,403	392,498	311,676
10.00 Total obligations	1,839,614	1,581,551	1,956,331
Financing:			
17.00 Recovery of prior year obligations	-1,562		
21.40 Unobligated balance available, start of year: Treasury balance	-194,811	-208,040	-268,370
22.00 Unobligated balance transferred, net	-3,372		
24.40 Unobligated balance available, end of year: Treasury balance	208,040	268,370	481,714
25.00 Unobligated balance expiring	8,340		
39.00 Budget authority (gross)	1,914,249	2,084,281	2,069,875
Budget authority:			
Current:			
40.00 Appropriation	772,595	735,042	708,804
40.25 Appropriation (special fund, indefinite)	577,673	658,751	672,946
40.75 Procurement reduction pursuant to P.L. 103-329		-2,142	
42.00 Transferred from other accounts	9,587	4,196	
43.00 Appropriation (total)	1,359,855	1,395,847	1,381,550
Permanent:			
60.05 Appropriation (indefinite)	280,181	354,936	376,249
68.00 Spending authority from offsetting collections	253,403	392,498	311,676
Relation of obligations to outlays:			
71.00 Total obligations	1,839,614	1,581,551	1,956,331
Obligated balance, start of year:			
72.10 Receivables from other government accounts	-80,457	-83,589	-85,089
72.40 Unpaid obligations: Treasury balance	294,023	288,567	281,430
Obligated balance, end of year:			
74.10 Receivables from other government accounts	93,589	85,089	94,289
74.40 Unpaid obligations: Treasury balance	-288,567	-281,430	-279,322
77.00 Adjustments in expired accounts	-12,513		
78.00 Adjustments in unexpired accounts	-1,562		
87.00 Outlays (gross)	1,853,577	1,581,089	1,957,709
Adjustments to gross budget authority and outlays:			
Offsetting collections from:			
88.00 Federal sources	-188,553	-192,328	-198,353
88.40 Non-Federal sources	-198,850	-110,170	-113,323
88.90 Total, offsetting collections	-253,403	-302,498	-311,676
89.00 Budget authority (net)	1,820,846	1,781,783	1,757,799

General and special funds—Continued

MISCELLANEOUS PERMANENT APPROPRIATIONS—Continued

Object Classification (in thousands of dollars)—Continued

Identification code 20-9922-0-2-806		1994 actual	1995 est.	1996 est.
11.5	Other personnel compensation	1,040	1,086	1,147
11.8	Special personal services payments	36	37	39
11.9	Total personnel compensation	13,070	14,902	15,737
12.1	Civilian personnel benefits	4,050	4,547	4,802
21.0	Travel and transportation of persons	678	769	812
22.0	Transportation of things	76	108	114
23.1	Rental payments to GSA	40	54	57
23.2	Rental payments to others	278	375	396
23.3	Communications, utilities, and miscellaneous charges	1,028	1,379	1,456
24.0	Printing and reproduction	-5	7	8
25.1	Advisory and assistance services	4,179	4,304	4,545
25.3	Purchases of goods and services from Government accounts	.....	286	302
26.0	Supplies and materials	667	746	788
31.0	Equipment	1,485	2,061	2,176
32.0	Land and structures	1,350	1,439	1,520
41.0	Payments to the Treasurer of Puerto Rico	135,049	136,225	143,854
44.0	Refunds	10,836	11,209	11,545
99.0	Subtotal, direct obligations	172,781	178,412	188,112
99.0	Reimbursable obligations	434	.....	.....
99.9	Total obligations	173,215	178,412	188,112

Personnel Summary

Identification code 20-9922-0-2-806		1994 actual	1995 est.	1996 est.
1001	Total compensable workyears: Full-time equivalent employment	323	365	365

REFUNDS, TRANSFERS, AND EXPENSES; UNCLAIMED AND ABANDONED GOODS

Program and Financing (in thousands of dollars)

Identification code 20-8789-0-7-751		1994 actual	1995 est.	1996 est.
	Program by activities:			
10.00	Total obligations	3,017	3,111	3,204
	Financing:			
17.00	Recovery of prior year obligations	-9	.....	.....
21.40	Unobligated balance available, start of year: Treasury balance	-4,770	-6,038	-6,038
24.40	Unobligated balance available, end of year: Treasury balance	6,038	6,038	6,038
60.27	Budget authority (appropriation) (trust fund, indefinite)	4,277	3,111	3,204
	Relation of obligations to outlays:			
71.00	Total obligations	3,017	3,111	3,204
72.40	Obligated balance, start of year: Unpaid obligations: Treasury balance	2,055	2,129	2,129
74.40	Obligated balance, end of year: Unpaid obligations: Treasury balance	-2,129	-2,129	-2,129
78.00	Adjustments in unexpired accounts	-9	.....	.....
90.00	Outlays	2,935	3,111	3,204

Unclaimed and abandoned goods are held in storage under Customs custody for one year from the date of importation. At the end of that period, all merchandise upon which duties, storage, and other charges have not been paid is appraised and sold at public auction. The proceeds of such sales are deposited in this account. The salaries and expenses account is reimbursed for expenses of such sales and the balance is transferred to the general fund. (19 U.S.C. 528, 1491, 1493, 1559, 1613, 1624).

Object Classification (in thousands of dollars)

Identification code 20-8789-0-7-751		1994 actual	1995 est.	1996 est.
22.0	Transportation of things	31	32	33
25.2	Other services	1,273	1,313	1,352
44.0	Refunds	1,713	1,766	1,819
99.9	Total obligations	3,017	3,111	3,204

HARBOR MAINTENANCE FEE COLLECTION

For administrative expenses related to the collection of the Harbor Maintenance Fee, pursuant to Public Law 103-182, $3,000,000, to be derived from the Harbor Maintenance Trust Fund and to be derived transferred to and merged with the Customs "Salaries and Expenses" account for such purposes.

Program and Financing (in thousands of dollars)

Identification code 20-8870-0-7-751		1994 actual	1995 est.	1996 est.
	Program by activities:			
10.00	Total obligations	.....	.....	3,000
	Financing:			
40.26	Budget authority (appropriation) (trust fund, definite)	.....	.....	3,000
	Relation of obligations to outlays:			
71.00	Total obligations	.....	.....	3,000
72.40	Obligated balance, start of year: Unpaid obligations: Treasury balance	.....	.....	.....
74.40	Obligated balance, end of year: Unpaid obligations: Treasury balance	.....	.....	-270
90.00	Outlays	.....	.....	2,730

Object Classification (in thousands of dollars)

Identification code 20-8870-0-7-751		1994 actual	1995 est.	1996 est.
23.3	Communications, utilities, and miscellaneous charges	.....	.....	1,500
25.2	Other services	.....	.....	1,500
99.9	Total obligations	.....	.....	3,000

BUREAU OF ENGRAVING AND PRINTING

Federal Funds

Intragovernmental funds:

BUREAU OF ENGRAVING AND PRINTING FUND

Program and Financing (in thousands of dollars)

Identification code 20-4502-0-4-803		1994 actual	1995 est.	1996 est.
	Program by activities:			
	Operating expenses:			
00.01	Engraving and printing	383,315	425,475	442,651
00.02	Space utilized by other agencies	4,545	1,800	1,800
00.03	Other miscellaneous services	1,041	549	549
00.91	Total operating expenses	388,901	427,824	445,000
	Capital investment:			
01.01	Purchase of operating equipment	64,296	78,927	68,854
01.02	Plant alterations and experimental equipment	1,016	1,073	1,146
01.91	Total capital investment	65,312	80,000	70,000
10.00	Total obligations	454,213	507,824	515,000
	Financing:			
21.90	Unobligated balance available, start of year: Fund balance	-142,920	-131,029	-102,330
24.90	Unobligated balance available, end of year: Fund balance	131,029	102,330	82,455
68.00	Budget authority (gross): Spending authority from offsetting collections	442,322	479,125	495,125
	Relation of obligations to outlays:			
71.00	Total obligations	454,213	507,824	515,000

THIRD ANNUAL REPORT TO CONGRESS

ON THE

STATUS OF THE HARBOR MAINTENANCE TRUST FUND

FOR

FISCAL YEAR 1994

BACKGROUND

1. Introduction. This report is being provided in compliance with Section 330 of the Water Resources Development Act of 1992, Public Law 102-580. This is the third Annual Report to Congress on the status of the Harbor Maintenance Fee (HMF) and Trust Fund (HMTF). For more background information on the HMF, please refer to the First Annual Report to Congress, which covered the history of the HMF and HMTF since its inception in 1986.

2. Current Level of Recovery. Section 11214 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-580, increased the Harbor Maintenance Fee from 0.04 percent to 0.125 percent. This increase went into effect on January 1, 1991. Section 316 of the Water Resources Development Act of 1990, Public Law 101-640, authorized recovery of up to 100 percent of the Army Corps of Engineers eligible Operation and Maintenance (O&M) expenditures made on behalf of commercial navigation. The 0.125 percent *ad valorem* fee also was calculated to be sufficient to reimburse the National Oceanic and Atmospheric Administration (NOAA) on an annual basis approximately $45.5 million (an amount approximately a 0.01 percent *ad valorem* fee) for its activities pertaining to commercial navigation. Despite numerous attempts, the authority to withdraw funds from the HMTF has never been obtained by NOAA, and the revenue intended for its use has been accumulating in the Trust Fund since January 1, 1991. Deposits into the HMTF during Fiscal Year (FY) 1994 totaled $647,560,442.14. This includes $12,825,776.10 in "Interest on Investments" and an additional $1,369,197.27 in "Interest Income—Discount" (which is *not* available for obligation and, therefore, not counted toward the beginning balance for FY 1995). Toll receipts from the St. Lawrence Seaway were $11,112,158.04 during this fiscal year. Both revenue and expenditures will be discussed in more detail later in this report.

COSTS ELIGIBLE FOR RECOVERY

3. Defining Expenditures Eligible for Recovery. Section 210 of Public Law 99-662 authorizes appropriations out of the Harbor Maintenance Trust Fund for 100 percent of the "eligible operations and maintenance costs of those portions of the St. Lawrence Seaway operated and maintained by the St. Lawrence Seaway Development Corporation" and "not more than 40 percent" (amended under Section 316 of Public Law 101-640, the Water Resources Development Act of 1990, to 100 percent) "of the eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States." Section 210 of Public Law 99-662 refers to the payment of such sums as may be necessary to pay for "eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States." The Corps of Engineers interprets the term "commercial navigation" referenced in Section 210 to mean any project authorized by Congress with "commercial navigation" as an authorized purpose. O&M costs for these projects are accounted by the Corps of Engineers Management Information System (COEMIS). Transfers for current fiscal year expenditures are based on the actual expenditures of the previous fiscal year; that is, FY 1994 withdrawal is equal to FY 1993 actual expenditures.

4. Army Corps of Engineers Expenditures Eligible for Recovery. Many projects with "commercial navigation" as a project purpose have other authorized purposes as well. Such purposes include recreation, hydropower, flood control, water supply, and the like. Typically, deep draft port projects are single purpose commercial navigation projects, although a few also are authorized for recreation. All O&M expenditures made on behalf of single-purpose commercial navigation projects were considered subject to recovery. Expenditures for other specific purposes, such as hydropower, for example, were not eligible for monies from the HMTF. Joint-use costs were allocated to the project's various purposes in proportion to the benefits realized for each purpose. Appendix A displays annual O&M expenditures eligible for reimbursement from the Harbor Maintenance Trust Fund during FY 1994. Appendix A includes two tables which differentiate between deep draft projects (greater than 14 feet) and shallow draft projects (14 feet and less). These are identified by state and by project name. The Army Corps of Engineers transfers during FY 1994, which represent actual expenditures made during FY 1993, were $476,890,300. (Note: A transfer of $270,000 in FY 1993 was erroneously recorded as a Corps of Engineers outlay by the Department of the Treasury, but was corrected in FY 1994. By making this correction in FY 1994, the Treasury Annual Report understates the actual Corps expenditures by that amount.)

5. Other Expenditures Eligible for HMTF Funding. One hundred percent of the O&M expenditures for the St. Lawrence also are taken from the HMTF. During FY 1994, $10,940,000 was transferred

to the St. Lawrence Seaway Development Corporation for its use in FY 1994, including $175,000 for St. Lawrence Seaway rent payments transferred to the Department of Transportation. In addition, Seaway tolls for that portion under United States jurisdiction are deposited into the Harbor Maintenance Trust Fund but then rebated fully to vessel operating companies that paid the tolls. During FY 1994, $9,546,557.02 in Seaway tolls were returned to vessel operating companies.

6. Discontinuance of St. Lawrence Seaway Tolls. As referenced in the previous paragraph, the St. Lawrence Seaway Development Corporation had been depositing tolls from the U.S. portion of the St. Lawrence Seaway into the Harbor Maintenance Trust Fund and rebating these tolls to vessel operating companies. With the passage of Section 339 of Public Law 103-331, tolls for the U.S. portion of the Seaway have been eliminated as of October 1, 1994, although some delinquent rebates may continue into FY 1995. The operating expenses of the St. Lawrence Seaway will continue to be funded from the HMTF, as before.

7. Use of HMTF for Administrative Expenses. During the 103rd Congress, legislation was enacted which allows the Department of the Treasury, the Army Corps of Engineers, and the Department of Commerce to share a maximum of $5 million per year for expenses incurred in the administration of the HMF and HMTF. Under this law, Section 683 of Public Law 103-182 (107 Stat. 2057), funds were made available as of the beginning of FY 1995; however, enactment was too late to have it included in the FY 1995 budget. Four million dollars has been budgeted for use in FY 1996. One million dollars has been bud-

geted by the Corps to improve its collection and analysis of domestic waterborne commerce subject to the HMF. The remainder of the funds will be available to improve the accuracy and evaluation of shipper export declarations, as well as the evaluation of import records by the U.S. Customs Service. Increases in collections are expected to improve significantly over the next 3-5 years, particularly in the domestic and export sectors. There is every expectation to collect delinquent fees; and to fine those who have intentionally avoided paying the HMF.

HARBOR MAINTENANCE FEE REVENUES

8. Collections and Receipts. All commerce subject to the Harbor Maintenance Fee (imports, exports, and domestic) incurs the same 0.125 percent *ad valorem* fee. Imports lead as a source of revenue paid into the HMTF since they lead in the total volume and value of cargo subject to the fee. Generally, imports tend to consist of higher value commodities (e.g., electronics, automobiles, etc.) while U.S. exports and domestic cargo generally are lower value cargo (e.g., grain, coal, paper, etc.). The following table shows revenue paid into the HMTF since FY 1989, based on actual collections by the U.S. Customs Service, through the last day of each fiscal year.

Harbor Maintenance Fee and Trust Fund
Collections by Source
FY 1989 through FY 1994
(thousands of dollars)

	FY 1989	FY 1990	FY 1991
Imports	$105,927	$109,215	$258,321
Exports	44,618	45,808	93,194
Foreign Trade Zones	3,876	4,020	9,166
Domestics	8,590	9,069	19,518
Passenger	666	559	1,977
Net Collections:	$163,677	$168,671	$382,176

	FY 1992	FY 1993	FY 1994
Imports	$342,402	$361,678	$391,679
Exports	142,916	169,141	168,241
Foreign Trade Zones	16,974	20,959	21,895
Domestics	28,451	31,858	34,558
Passenger	3,275	4,748	4,811
Net Collections:	$534,018	$588,384	$621,184

Source: Office of Inspection and Control, U. S. Customs Service, Department of the Treasury Note: HMF collections will differ from deposits into the HMTF due to reporting time and estimating error.

Total revenue collections shown in this table differ from the "official" HMTF deposits shown in paragraph 12 of this report because the Treasury Income Statement of the HMTF, like the Budget of the United States, must rely on revenue estimates

prepared weeks or months before the close of the fiscal year. The Department of the Treasury reconciles differences between actual fee receipts as reported by the U.S. Customs Service and its estimates on a monthly basis, as well as at the beginning of each fiscal year. Only the U.S. Customs Service reports actual revenue by source. This information is used to monitor receipts on a regular basis and to estimate compliance.

9. Enforcement, Collections, and Shortfalls. The HMF on imports is collected in conjunction with the U. S. customs duty. The mechanism for administrating, collecting, and enforcing customs fees is well established and well enforced. Shipper Export Declarations (SED's) are routinely reported to the Department of Commerce. The export values reported on the SED's were important only for statistical purposes prior to the implementation of the HMF. Now that Congress has authorized the $5 million per year for administering the HMF, with appropriations expected in FY 1996, it should be possible to develop a procedure for better ensuring the accuracy of the fees paid on exports. Domestic vessel operators routinely report tonnage movements to the Army Corps of Engineers Waterborne Commerce Statistical Center; however, the value of this cargo is not available to the vessel operating companies, and the tonnage data have been used for statistical purposes only. Reporting is good, but essentially voluntary. Based on the type and volume of commerce, compared with revenue paid, there appears to be shortfalls by both domestic shippers and exporters.

10. Funding for Administrative Costs. Section 1403 of Public Law 99-662 created the HMTF (by

amending subchapter A of Chapter 98 of the Internal Revenue Code of 1954). This section also authorized the Department of the Treasury to obtain, annually, up to $5 million to administer the HMF and HMTF. This money was to be appropriated from the Merchandise Processing Fee authorized under the Consolidated Omnibus Budget Reconciliation Act of 1985. However, a 1987 report issued by a panel convened under the General Agreement on Tariff and Trade (GATT) found that, to be consistent with the GATT, expenditures of funds collected under the U.S. Merchandise Processing Fee must be for services related to the processing of customs entry of the merchandise. This effectively nullified Treasury's ability to use its existing authority to obtain the needed $5 million for administering the HMF and HMTF. After several attempts, Congress rectified this problem in December 1993, with the passage of Section 683 of Public Law 103-182, the North American Free Trade Agreement Implementation Act. This authorizes up to $5 million to be appropriated from the HMTF annually for the administrative costs of the Department of the Treasury, the Army Corps of Engineers, and the Department of Commerce. The Corps has budgeted $1 million in FY 1996, and the U.S. Customs Service has budgeted $3 million. It is anticipated that the U.S. Customs Service will monitor the accuracy and compliance of exports, as well as imports. Over the next three years, it is expected that collections will increase from $15 million to $50 million, correcting the suspected deficiencies in collections which currently exist and bringing collections to near full compliance by the end of FY 2000.

HARBOR MAINTENANCE TRUST FUND

11. Transfers From the Harbor Maintenance Trust Fund. Recent transfers from the HMF to the Department of Transportation's St. Lawrence Seaway Development Corporation and to the Army Corps of Engineers are shown in the following table.

Transfers from
Harbor Maintenance Trust Fund
FY 1989 through FY 1994
(thousands of dollars)

	FY 1989	FY 1990	FY 1991
Corps of Engineers	$159,026	$159,074	$333,401
St. Lawrence Seaway	10,382	11,397	9,075
SLS Toll Rebates	10,977	9,041	10,298
Dept. of Transportation*	0	0	0
Administration Cost	167	169	186
Net Transfers:	$180,552	$179,681	$352,960

	FY 1992	FY 1993	FY 1994
Corps of Engineers	$462,229	$446,164	$476,890*
St. Lawrence Seaway	10,950	13,584	10,765
SLS Toll Rebates	9,565	8,074	9,546
Dept. of Transportation*	16	160	175
Administration Cost	184	124	—
Net Transfers:	$482,944	$468,106	$497,376

Source: Funds Accounting Branch, Financial Management Services, Department of the Treasury

* As shown in the Department of the Treasury Income Statement and includes $270,000 transfer error.

** Payment of rent for the St. Lawrence Seaway Development Corporation as authorized by Title 1, Public Law 102-143.

12. Harbor Maintenance Trust Fund Revenue and Transfers. The following table summarizes the revenues received into the HMTF and transfers from the HMTF for the last six years. The table is prepared from data provided by the Funds Accounting Branch, Financial Management Services, of the Department of the Treasury. Revenues shown in this table will not agree with actual collections reported by the U.S. Customs Service because of the time it takes for Treasury to account for revenue transfers from the U.S. Customs Service. Reconciliation between actual collections by Customs and revenue estimates made by Treasury are made each month; however, end of year differences are inevitable. The Financial Management Services, Department of the Treasury,

is the official source of HMTF balances and disbursements, and is the only source of obtaining interest income attributed to the HMTF. The following table represents the official status of the HMTF.

Harbor Maintenance Trust Fund
Revenues and Transfers
FY 1989 through FY 1994
(thousands of dollars)

	FY 1989	FY 1990	FY 1991
Beginning Balance:	$9,715	$12,312	$30,254
Revenues:			
Harbor Maintenance Fee	166,000	180,493	374,420
Toll Receipts	9,806	8,849	9,267
Interest	7,343	8,281	11,814
Net Revenues:	183,149	197,623	395,501
Net Available:	192,864	209,935	425,755
Transfers:			
Corps of Engineers	159,026	159,074	333,401
St. Lawrence Seaway	10,382	11,397	9,075
SLS Toll Rebates	10,977	9,041	10,298
Dept. of Transportation*	0	0	0
Administration Costs	167	169	186
Net Expenditures:	180,552	179,681	352,960
Surplus/(Deficit):	$12,312	$30,254	$72,795

	FY 1992	FY 1993	FY 1994
Beginning Balance:	$72,795	$120,931	$303,277
Revenues:			
Harbor Maintenance Fee	505,827	628,462	622,253
Toll Receipts	8,733	8,739	11,112
Interest	16,520	13,521	12,826
Net Revenues:	531,080	650,722	646,191
Net Available:	603,875	771,653	949,468
Transfers:			
Corps of Engineers	462,229	446,434	476,620
St. Lawrence Seaway	10,950	13,584	10,765
SLS Toll Rebates	9,565	8,074	9,546
Dept. of Transportation*	16	160	175
Administration Costs	184	124	(Note 1)
Net Expenditures:	482,944	468,376	$497,106
Surplus/(Deficit):	$120,931	$303,277	$452,360

Source: Funds Accounting Branch, Financial Management Services, Department of the Treasury (Corrected for $270,000 error in the Treasury Income Statement in the Corps transfer account for FY 94)

* Payment of rent for the St. Lawrence Seaway Development Corporation as authorized by Title 1, Public Law 102-143.

Note 1: Administrative Costs are exclusively for the SLS Toll Rebates and are included in that cost category.

13. Harbor Maintenance Trust Fund Balances. According to the Income Statement of the Financial Management Services Division of the Department of the Treasury, the FY 1994 surplus was $150,183,583.12, resulting in a total surplus of $453,729,092.32 as of September 30, 1994, including $1,369,197.27 in "Interest Income—Discount" which is not available for obligation and not counted toward the beginning balance for FY 1995. This "surplus" continues to be of concern and is in part the result of the absence to date of authorizing legislation to allow the NOAA to receive approximately $45.5 million per year from the Trust Fund. A second contributing factor is that the required O&M of the Army Corps of Engineers has been less than had been projected in 1989 when the new *ad valorem* rate of 0.125 percent was established. As expenditures from the HMF have declined, collections have been only slightly less than projected at that time. This has resulted in a growing surplus in the HMTF account. On December 8, 1993, Section 683 of Public Law 103-102 was signed into law, authorizing the withdrawal of up to $5 million per year from the Trust Fund to improve the administration of the Fund and for enforcement purposes. Four million dollars has been budgeted for FY 1996. While better administration and enforcement would tend to add to the HMTF surplus by increasing collections, the Administration supports appropriating these funds to reach full compliance across all types of shippers.

14. Harbor Maintenance Trust Fund Projections. The following table displays anticipated deposits, withdrawals, and Trust Fund balances through FY 1999. The projections assume FY 1996 appropriations of $4 million for administering the HMF and HMTF. If this does not occur, annual revenue projections are likely to be reduced as described earlier. The projections also assume that Congress will pass legislation to enable NOAA to fund its commercial navigation activities from the HMTF.

Harbor Maintenance Trust Fund
Projected Revenues and Transfers
FY 1993 through FY 1998
(thousands of dollars)

	FY 1994	FY 1995	FY 1996
Beginning Balance:	$303,277	$452,360	$645,246
Revenues:			
Harbor Maintenance Fee	622,253	634,700	679,100
Toll Receipts	11,112	N/A	N/A
Interest	12,826	30,596	38,447
Net Revenues:	645,191	665,296	717,547
Net Available:	949,458	1,117,656	1,362,793
Transfers:			
Corps of Engineers	476,620	462,000	499,000
St. Lawrence Seaway	10,765	10,229	10,243
SLS Toll Rebates	9,546	N/A	N/A
Dept. of Transportation	175	181	169
Admin. (Treasury; Corps; Commerce)	0	0	4,000
NOAA (Proposed Legislation)	0	0	45,500
Net Transfers:	497,106	472,410	558,912
Surplus/(Deficit):	$452,360	$645,246	$558,912

	FY 1997	FY 1998	FY 1999
Beginning Balance:	$803,881	$1,031,195	$1,318,805
Revenues:			
Harbor Maintenance Fee	724,416	764,034	790,975
Toll Receipts	N/A	N/A	N/A
Interest	46,814	58,492	73,025
Net Revenues:	771,230	822,526	864,000
Net Available:	1,575,111	1,853,721	2,183,805
Transfers:			
Corps of Engineers	484,000	474,000	464,000
St. Lawrence Seaway	10,243	10,243	10,243
SLS Toll Rebates	N/A	N/A	N/A
Dept. of Transportation	173	173	157
Admin. (Treasury; Corps; Commerce)	4,000	4,000	4,000
NOAA (Proposed Legislation)	45,500	45,000	45,500
Net Transfers:	543,916	533,916	523,900
Surplus/(Deficit):	$1,031,195	$1,319,805	$1,659,905

* FY 1993 figures are those reported by Financial Management Services, Department of Treasury; FY 1994 and beyond are budget data from the respective agencies cited.

15. Challenge by the European Union (EU) Members of the General Agreement on Tariff and Trade (GATT). In 1992, the EU members of GATT requested a formal "consultation" concerning the appropriateness of the HMF within the context of GATT. Issues included the *ad valorem* nature of the fee, the nature of the expenditures made on behalf of commercial navigation, and verification that the domestic sector of the U.S. economy also was paying the fee. Of special concern was the growing surplus of the HMTF. The Assistant Secretary of the Army (Civil Works) sent a representative to Geneva who, with a legal advisor from the Office of the U.S. Trade Representative, addressed these issues with the EU members of GATT. Additional consultations have not been requested, but at an April 1995 Department of Transportation meeting with the Consultative Shipping Group (consisting of West European shipping nations, the EU, and Japan), concern was again expressed about the growing surplus in the HMTF. The European Union representative made it clear that the EU has been monitoring carefully the HMTF.

16. Conclusions. The HMTF is meeting its objective of financing 100 percent of the eligible O&M expenditures made on behalf of commercial navigation for the St. Lawrence Seaway Development Corporation and the Army Corps of Engineers. With the $4 million funding for improved administration and enforcement of the HMF, improvements in collections can be anticipated, particularly in the domestic and export sectors. Passage of enabling legislation for NOAA would reduce the projected surplus now accumulating in the HMTF in a manner consistent with

the objectives of the Fund. The growing surplus in the HMTF remains. This can only be corrected by widening the authorized uses for HMTF monies, or by reducing the HMF to a level consistent with its annual expenditures.